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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DR. MARKCUS KITCHENS, JR., : CIVIL CASE NUMBER
PLAINTIFF :
 :
VERSUS : 22-3301
 :
UNITED STATES MEDICAL :
LICENSING EXAMINATION, :
DEFENDANTS :

MAY 16, 2023
VIA MICROSOFT TEAMS
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE JOHN F. MURPHY, J.

BENCH TRIAL - DAY 2

APPEARANCES:

DR. MARKCUS KITCHENS, JR.
PRO SE
625 HAMPTON WAY, #2
RICHMOND, KY 40475

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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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COUNSEL FOR THE DEFENDANT

1 (CLERK OPENS COURT.)

2 THE COURT: HELLO. ALL RIGHT. LETS SEE,
3 BEFORE WE RESUME DR. KITCHENS'S CASE IN THIS MATTER, DO
4 EITHER OF YOU HAVE ANY BUSINESS TO ADDRESS, LOGISTICAL
5 ISSUES?

6 MS. MEW: I DO YOUR HONOR. JUST A COUPLE
7 OF POINTS.

8 FIRST, BEFORE WE STARTED THE TRIAL
9 YESTERDAY, I BELIEVE THAT DR. KITCHENS FILED ALL OF HIS
10 EXHIBITS ON THE RECORD AND I AM NOT SURE, I THINK THAT
11 MIGHT HAVE BEEN PREMATURE AND SO I THINK WE SHOULD -- I
12 WOULD SUGGEST OR ASK OR PROPOSE THAT WE STRIKE THAT
13 BECAUSE ITS GOT EVERYTHING IN THERE AND THEN WE KIND OF
14 GO THROUGH THIS DAILY PROCESS THAT WE ARE DOING.

15 AND THEN WHAT I JUST POINTED OUT TO DR.
16 KITCHENS, AND I AM NOT SURE IF HE'S READ THIS E-MAIL
17 FROM JUST LIKE AN HOUR AGO, I ALSO NOTICED, WHEN I WAS
18 LOOKING BACK OVER THE DOCUMENTS LAST NIGHT THAT THERE
19 ARE SOME PLACES WHERE HE HAD NOT TAKEN OUT HIS DATE OF
20 BIRTH, SO HE MIGHT WANT TO CLEAN THAT UP ANYWAY BEFORE
21 WE DO THE FINAL FILING.

22 THE COURT: SURE. I WILL LET YOU GUYS
23 WORK ON THAT AND, YOU KNOW, MAKE ME A COMPLETE
24 RECOMMENDATION, BUT THAT SOUNDS LIKE A FINE PLAN.

25 MS. MEW: AND JUST ANOTHER HOUSEKEEPING

1 MATTER, YOUR HONOR, I NOTICED THERE IS A WOMAN NAMED
2 MEREDITH GELLER WHO WAS PARTICIPATING IN THE HEARING
3 YESTERDAY, AND I WAS JUST WONDERING IF WE COULD HAVE HER
4 IDENTIFIED.

5 THE COURT: SURE. IF YOU DON'T KNOW WHO
6 SHE IS, THEN I WILL ASK DR. KITCHENS.

7 WHO IS MEREDITH GELLER?

8 DR. KITCHENS: I'M NOT QUITE SURE WHO
9 THAT IS.

10 THE COURT: THAT'S ODD. WELL, LET'S SEE.
11 I DIDN'T WRITE DOWN, MYSELF, THE LIST OF NAMES BUT I
12 WILL ADMIT THE NAME DOESN'T SPRING TO MIND. I DON'T
13 DOUBT YOU, BUT -- OH, GO AHEAD DR. KITCHENS.

14 DR. KITCHENS: YES, YOUR HONOR. ACTUALLY
15 I WAS INFORMED THAT THAT IS A FORMER PROFESSOR OF MY
16 WIFE'S WHO WAS INTERESTED IN WATCHING.

17 THE COURT: OKAY, MS. MEW?

18 MS. MEW: THAT'S FINE, YOUR HONOR.

19 AND THEN I JUST WANTED TO INTRODUCE
20 LESLIE COLETTES TO YOU, WHO IS INHOUSE COUNSEL FOR NBME,
21 THAT IS HERE TODAY.

22 THE COURT: HELLO, MS. COLETTES.

23 WELCOME.

24 MS. COLETTES: GOOD MORNING, YOUR HONOR.

25 THE COURT: GOOD MORNING. ALL RIGHT.

1 ANYTHING ELSE?

2 MS. MEW: ONE LAST POINT. SORRY, YOUR
3 HONOR, I HATE TO ALWAYS BE THE HOUSEKEEPING PERSON.

4 BUT I ALSO -- FOR DR. KITCHENS, IN MY
5 E-MAIL TO YOU THIS MORNING TOO, THERE WAS A DOCUMENT
6 THAT WE PREVIOUSLY PRODUCED IN DISCOVERY AT J X7, AND I
7 REALIZED THAT THERE WAS SOME ADDITIONAL PERSONAL
8 INFORMATION THAT NEEDED TO BE REDACTED FROM THAT THE
9 DOCUMENT, SO I SENT TO YOU UPDATED ONE, AND IF FOR ANY
10 REASON YOU DON'T HAVE IT TEED UP WE WOULD BE HAPPY TO
11 PUBLISH IT FOR YOU AND MOVE IT FOR YOU IF YOU NEED IT IN
12 YOUR EXAMINATION THIS MORNING.

13 DR. KITCHENS: THANK YOU, MS. MEW.

14 THE COURT: ANYTHING ELSE?

15 MS. MEW: OH, SORRY, YOUR HONOR.

16 THE ONE OTHER THING IS I WAS -- LAST
17 NIGHT I WAS TRYING TO THINK ABOUT A WAY OF MAYBE
18 PRESENTING SOME OF MY OBJECTIONS SO IT IS NOT -- SO WE
19 CAN ALLOW FOR THE TESTIMONY TO PROCEED SOME MORE, SO I
20 WAS THINKING OF MAKING -- JUST BEFORE DR. SHEPHERD EVEN
21 BEGINS I CAN PERHAPS PUT ONE OBJECTION JUST BASED ON A
22 CERTAIN SUBJECT MATTER, RELEVANCY, WHATNOT, ON THE
23 RECORD, AND THEN THAT WOULD HAVE A SIMILAR ONE, I THINK,
24 FOR DR. KITCHENS THAT WOULD ALSO MAYBE HELP SO WE WOULD
25 NOT HAVE TO INTERRUPT SO MUCH.

1 SO I WANTED TO FLOAT THAT IN CASE WE WANT
2 TO ADDRESS THAT BEFORE THEY START DOING THEIR DIRECTS.

3 THE COURT: I THINK THAT'S A GREAT IDEA
4 BECAUSE IT WILL ALERT ME TO WHAT THE OBJECTION IS AT THE
5 START AND THEN I WILL BE LISTENING FOR THOSE THINGS AND
6 IT WILL HELP ME FILTER THE TESTIMONY THROUGH THAT
7 CONCERN. IT WILL ALSO GIVE DR. KITCHENS A CHANCE TO
8 HEAR WHAT THE OBJECTION IS AND IF HE FEELS THE NEED TO
9 MAKE ANY ADJUSTMENTS HE CAN DO THAT.

10 SO I THINK THAT'S A GREAT IDEA AND I
11 WOULD UNDERSTAND THAT THOSE WOULD BE STANDING
12 OBJECTIONS.

13 MS. MEW: OKAY. IT WILL ONLY -- IT WILL
14 GO SO FAR, BUT I THINK IT WILL HELP SOME SO WE CAN TRY
15 TO GET THROUGH A LITTLE MORE EFFICIENTLY.

16 THE COURT: THAT'S FINE. THAT'S TOTALLY
17 FINE. OKAY. ANYTHING ELSE?

18 MS. MEW: NOTHING ELSE FROM ME, YOUR
19 HONOR.

20 THE COURT: YEARS OF -- DR. KITCHENS,
21 YEARS OF TAKING DEPOSITIONS WE ARE ALL TRAINED TO ALWAYS
22 ASK ANYTHING ELSE? ALL RIGHT. THAT'S FINE.

23 SO DR. KITCHENS, THE FLOOR IS YOURS.

24 BEFORE YOU CALL YOUR FIRST WITNESS, COULD
25 YOU REMIND ME WHAT YOUR PLAN IS FOR THE REST OF YOUR

1 CASE?

2 DR. KITCHENS: YES, YOUR HONOR.

3 SO I WILL BE DOING FOR TESTIMONY WITH DR.
4 SHEPHERD. THEN AFTER THAT, I PLAN TO TESTIFY ON MY
5 BEHALF AS WELL.

6 THE COURT: OKAY. SOUNDS GOOD.

7 WELL, IN THAT CASE, GO AHEAD. THE FLOOR
8 IS YOURS. CALL YOUR NEXT WITNESS, PLEASE.

9 DR. KITCHENS: THANK YOU, YOUR HONOR.

10 YOUR HONOR, I WOULD LIKE TO CALL MY NEXT
11 WITNESS, DR. JONATHAN SHEPHERD.

12 THE COURT: ALL RIGHT. DR. SHEPHERD,
13 WELCOME.

14 (OFF THE RECORD DISCUSSION.)

15 THE COURT: CAN YOU HEAR US OKAY?

16 THE WITNESS: YES, GOOD MORNING, YOUR
17 HONOR, I CAN HEAR YOU.

18 THE COURT: GO AHEAD, LYNN.

19 THE COURT REPORTER: GOOD MORNING. CAN
20 YOU PLEASE RAISE YOUR RIGHT HAND?

21 (PLAINTIFF WITNESS, DR. JONATHAN
22 SHEPHERD, IS SWORN.)

23 THE COURT REPORTER: COULD YOU PLEASE
24 STATE AND SPELL YOUR NAME FOR THE RECORD.

25 THE WITNESS: MY NAME IS JONATHAN

1 SHEPHERD, J-O-N-A-T-H-A-N S-H-E-P-H-E-R-D.

2 THE COURT REPORTER: THANK YOU.

3 THE COURT: ALL RIGHT. GO AHEAD DOCTOR.

4 DR. KITCHENS: THANK YOU, YOUR HONOR.

5 DIRECT EXAMINATION

6 BY DR. KITCHENS:

7 Q. GOOD MORNING, DR. SHEPHERD.

8 HOW ARE YOU DOING THIS MORNING?

9 A. I AM DOING PRETTY WELL, DR. KITCHENS, THANK YOU.

10 Q. OKAY. I'M GOING TO KIND OF GIVE YOU A LITTLE
11 BIT OF AN OVERVIEW OF HOW I'M GOING TO KIND OF MOVE
12 FORWARD HERE.

13 SO AT THE BEGINNING I AM GOING TO GIVE
14 ACTUALLY A COUPLE OF QUESTIONS ON THE BACKGROUND TO HELP
15 QUALIFY YOU AS AN EXPERT IN THIS CASE; OKAY?

16 AND IF THERE IS ANY REASON OR
17 MISUNDERSTANDING OF A QUESTION THAT I ASK, PLEASE DO NOT
18 HESITATE TO ASK ME TO ASK IT AGAIN IN A DIFFERENT WAY.

19 ALSO BECAUSE THIS IS A RECORDING, IF YOU
20 WOULD -- ANSWER YES, NO, BECAUSE THE RECORDING DOES NOT
21 SHOW A YES OR NO, OR HEAD MOVEMENTS OR THINGS OF THAT
22 NATURE; UNDERSTOOD?

23 A. YES.

24 Q. SO, DR. SHEPHERD, WHERE DO YOU CURRENTLY WORK?

25 A. I CURRENTLY WORK AT HOPE HEALTH SYSTEMS.

1 Q. AND WHAT IS YOUR POSITION THERE?

2 A. CHIEF MEDICAL DIRECTOR.

3 Q. DID I ASK YOU TO REVIEW MATERIALS RELATED TO OUR
4 CASE TODAY?

5 A. YES.

6 Q. DID YOU REVIEW THOSE MEDICAL -- DID YOU REVIEW
7 THOSE MATERIALS?

8 A. YES.

9 Q. ARE YOU BEING PAID TODAY FOR YOUR TESTIMONY?

10 A. NO.

11 Q. HOW MANY TIMES HAVE YOU TESTIFIED IN COURT AS A
12 MEDICAL EXPERT?

13 A. THIS IS MY FIRST TIME.

14 Q. OKAY.

15 SO IS THERE ANY REASON TODAY THAT YOU
16 WILL NOT BE ABLE TO GIVE AN ACCURATE TESTIMONY TO THE
17 BEST OF YOUR ABILITY?

18 A. I WILL GIVE AN ACCURATE TESTIMONY TODAY.

19 Q. DR. SHEPHERD, WHERE DID YOU GO TO MEDICAL
20 SCHOOL?

21 A. UNIVERSITY OF ILLINOIS AT CHICAGO.

22 Q. AND WHERE DID YOU COMPLETE YOUR RESIDENCY?

23 A. I COMPLETED TWO RESIDENCIES FROM THE UNIVERSITY
24 OF ILLINOIS HOSPITAL AND AT THE JOHNS HOPKINS HOSPITAL
25 FOR CHILD AND ADOLESCENT PSYCHIATRY.

1 Q. THANK YOU.

2 AND AT YOUR CURRENT OCCUPATION HOW LONG
3 HAVE YOU -- HOW LONG HAVE YOU BEEN AN EMPLOYEE OF HOPE
4 HEALTH SYSTEMS.

5 A. I HAVE BEEN AN EMPLOYEE SINCE 2011; 12 YEARS.

6 Q. AND HOW LONG HAVE YOU HELD AN ACTIVE LICENSE TO
7 PRACTICE MEDICINE IN THE UNITED STATES?

8 A. I HAVE HELD AN ACTIVE LICENSE SINCE -- LET'S SEE
9 -- 2010, IN MARYLAND, AND I HAD AN ACTIVE LICENSE IN
10 ILLINOIS WHEN I WAS IN RESIDENCY BUT I LET THAT EXPIRE
11 IN 2011, BUT I THINK I HELD THAT FOR ABOUT FIVE -- FOUR
12 YEARS.

13 Q. OKAY.

14 AND DR. SHEPHERD, HAVE YOU EVER HAD YOUR
15 LICENSE TO PRACTICE MEDICINE REVOKED FOR ANY REASON?

16 A. NO.

17 Q. HAVE YOU AUTHORED OR CO-AUTHORED ANY PEER-REVIEW
18 ARTICLES?

19 A. I HAVE, YES.

20 Q. AND APPROXIMATELY HOW MANY ARTICLES HAVE YOU
21 CO-AUTHORED OR AUTHORED?

22 A. I HAVE AUTHORED -- OR CO-AUTHORED, ACTUALLY, FOR
23 MY MENTOR, ONE ARTICLE AND THEN I HAVE CO-AUTHORED A
24 CHAPTER OF A BOOK.

25 Q. AND WHAT IS LIKE, THE OVERVIEW OF THOSE

1 ARTICLES?

2 A. SO ONE OF THOSE ARTICLES IS IN RELATION TO THE
3 USE OF A MEDICATION AND HOW IT CAN CAUSE A CONDITION
4 CALLED CATATONIA, IT'S LIKE A STIFFNESS OF THE MUSCLES
5 THAT CAN RESULT AS A USE OF THE A MEDICATION.

6 THE BOOK, THE CHAPTER IN THE BOOK IS IN
7 RELATION TO SPIRITUALITY AND HOW THAT IMPACTS A PERSON'S
8 MENTAL HEALTH. SO WE LOOKED AT THE VARIOUS DIFFERENT
9 CULTURES THROUGHOUT THE WORLD ACTUALLY, AND THIS BOOK
10 WAS ACTUALLY SANCTIONED BY THE AMERICAN ACADEMY OF CHILD
11 AND ADOLESCENT PSYCHIATRY, WHICH I AM A PROUD MEMBER OF.

12 Q. THANK YOU FOR THAT, DR. SHEPHERD.

13 YOU ACTUALLY ANSWERED PART OF THE
14 QUESTION THAT I AM GOING TO ASK YOU NEXT IS:

15 ARE YOU A MEMBER OF ANY OTHER
16 PROFESSIONAL MEDICAL ASSOCIATIONS?

17 A. YES, I'M A MEMBER OF SEVERAL.

18 I AM IN THE AMERICAN PSYCHIATRIC
19 ASSOCIATION, A MEMBER OF THE AMERICAN ACADEMY OF CHILD
20 AND ADOLESCENT PSYCHIATRY -- AMERICAN ACADEMY OF CHILD
21 AND ADOLESCENT PSYCHIATRY, A MEMBER OF THE BLACK
22 PSYCHIATRISTS OF AMERICA, I'M A MEMBER OF THE AMERICAN
23 MEDICAL ASSOCIATION -- I'M TRYING TO THINK OF THE DUES
24 THAT I PAY EACH YEAR.

25 THE AMERICAN PSYCHIATRIC SOCIETY, I FEEL

1 LIKE I AM FORGETTING ONE, BUT THERE ARE SEVERAL I AM
2 ACTIVELY MEMBERS OF.

3 Q. THANK YOU FOR THAT.

4 AND IN YOUR CURRENT POSITION, WHAT ARE
5 YOUR DUTIES THAT YOU HOLD?

6 A. AT HOPE HEALTH SYSTEMS?

7 Q. YES, SIR.

8 A. AT HOPE HEALTH SYSTEMS I AM CHIEF MEDICAL
9 DIRECTOR, WHICH MEANS THAT I AM THE CHIEF MEDICAL
10 OFFICER; I OVERSEE ALL CLINICAL RESPONSIBILITIES.

11 SO THAT MEANS THAT THE PHYSICIANS, THE
12 NURSE PRACTITIONERS, THEY ARE SUPERVISED BY ME. I AM
13 THE PERSON THAT GO -- THAT SETS THE TONE, THE
14 ATMOSPHERE, AND THE CULTURE FOR THE THIRD LARGEST
15 PROVIDER OF MENTAL HEALTH SERVICES IN THE STATE OF
16 MARYLAND, WHICH HOPE HEALTH SYSTEMS IS.

17 I ALSO AM RESPONSIBLE FOR THE TRAINING
18 AND THE CURRICULUM THAT IS PROVIDED TO EACH OF THE
19 MENTAL HEALTH PROFESSIONALS THAT WORK THROUGH HOPE
20 HEALTH SYSTEMS. SO LARGE RESPONSIBILITY THERE AT THAT
21 JOB.

22 Q. OKAY.

23 AND ALSO, IN YOUR CURRENT ROLE, COULD YOU
24 PROVIDE AN ESTIMATE OF THE PORTION OF YOUR TIME
25 DEDICATED TO CLINICAL TREATMENT FOR PATIENTS?

1 A. YES, ABSOLUTELY, DIRECT CARE SERVICES.

2 SO ITS PROBABLY ABOUT 70 PERCENT DIRECT
3 CARE SERVICES AND 30 PERCENT ADMINISTRATION.

4 Q. AND I HAVE THREE MORE QUESTIONS BEFORE I ASK
5 YOUR HONOR TO TENDER YOU.

6 IS -- ROUGHLY SPEAKING, HOW MANY
7 COMPREHENSIVE EVALUATIONS FOR ADHD DO YOU ESTIMATE YOU
8 HAVE CONDUCTED WITHIN THE PAST TWO YEARS, TO THE BEST OF
9 YOUR RECOLLECTION?

10 A. EASILY 1000.

11 Q. ROUGHLY SPEAKING, HOW MANY OF THESE
12 COMPREHENSIVE EVALUATIONS FOR ADHD DO YOU ESTIMATE THAT
13 -- EXCUSE, ME SORRY.

14 AND CAN YOU PROVIDE A CLARIFICATION TO
15 THE COURT REGARDING THE AUTHORITY OF PSYCHIATRISTS TO
16 PRESCRIBE MEDICATION AS PART OF THOSE TREATMENTS?

17 A. ABSOLUTELY, YES.

18 SO I AM A CHILD ADOLESCENT PSYCHIATRIST,
19 BOARD CERTIFIED, DOUBLE BOARD, AND ONE OF THE MAIN
20 ISSUES THAT WE DEAL WITH IN CHILD PSYCHIATRY IS
21 ATTENTION DEFICIT-HYPERACTIVITY DISORDER. I WORK WITH A
22 NUMBER OF PEDIATRICIANS, PRIMARY CARE PHYSICIANS, WHO
23 COME TO ME AS AN EXPERT WHEN THEY ARE NOT SURE AS TO
24 WHAT IS HAPPENING WITH A CHILD.

25 SO IT IS ONE OF THE BREAD AND BUTTERS, IF

1 YOU WOULD, OF OUR SPECIALTY TO BE ABLE TO DIAGNOSE,
2 TREAT ADHD, AND ALSO I SPEAK ON THAT IN THE VARIOUS
3 ARENAS IN OUR COMMUNITY SO THAT WE CAN FACE FAITH
4 FIXATIONS AT MEDICAL CONFERENCES, WHICH I'LL BE DOING AT
5 THE AMERICAN PSYCHIATRIC ASSOCIATION THIS COMING
6 WEEKEND. SO THIS IS WHAT WE DO.

7 Q. THANK YOU, DR. SHEPHERD.

8 DR. KITCHENS: YOUR HONOR, AT THIS TIME I
9 WOULD LIKE TO TENDER DR. JONATHAN SHEPHERD AS AN EXPERT
10 IN CLINICAL PSYCHIATRY?

11 THE COURT: MS. MEW?

12 MS. MEW: NO OBJECTION TO THAT, YOUR
13 HONOR. COULD I ADD -- JUST, MY -- MY POSITION ON TOPICS
14 THAT MIGHT BE ADDRESSED IN THIS TESTIMONY NOW.

15 THE COURT: SURE.

16 MS. MEW: SO -- THANK YOU. AND GOOD
17 MORNING, DR. SHEPHERD.

18 THE WITNESS: GOOD MORNING.

19 MS. MEW: DR. SHEPHERD, I THINK WAS
20 DISCLOSED AS POTENTIALLY COVERING TOPICS INCLUDING
21 TREATMENT OF MENTAL HEALTH DIAGNOSES AND THE
22 RELATIONSHIP BETWEEN MENTAL HEALTH MEDICINE GENERALLY
23 AND THE AFRICAN AMERICAN DIASPORA, AND WE OBJECT TO THE
24 EXTENT THAT THE TESTIMONY WILL COVER THOSE TOPICS.

25 THEY ARE NOT RELEVANT TO THE ISSUES IN

1 THE CASE, WHICH RELATE TO DR. KITCHENS IS DISABLED
2 WITHIN THE MEANING OF THE ADA, AND ENTITLED TO HIS
3 REQUESTED FOR ACCOMMODATION ON THE U.S.M.L.E..

4 EXPERT TESTIMONY THAT DOES NOT RELATE TO
5 AN ISSUE THE CASE IS NOT RELEVANT AND THEREFORE NOT
6 HELPFUL. OUR BASIS IS UNDER RULES 401 THROUGH 403, AND
7 702, AND THE REMAINING TOPICS WE WILL ADDRESS THINGS IN
8 THE ORDINARY COURSE.

9 THE COURT: ALL RIGHT. THANK YOU, MS.
10 MEW.

11 DR. KITCHENS, TENDER IS ACCEPTED AND YOU
12 MAY PROCEED.

13 DR. KITCHENS: THANK YOU, YOUR HONOR.
14 BY DR. KITCHENS:

15 Q. DR. SHEPHERD, AS A PSYCHIATRIST, WHAT TYPE OF
16 TREATMENT DO YOU PROVIDE?

17 A. I PROVIDE TREATMENT OF PSYCHIATRIC MENTAL HEALTH
18 DISORDERS, SO THROUGH THAT I DO MEDICATION MANAGERMENTS.
19 I AM ALSO TRAINED TO DO PSYCHOTHERAPY.

20 Q. AND DO YOU HAVE A DIVERSE PATIENT POPULATION IN
21 YOUR CLINICAL PRACTICE, INCLUDING BOTH CHILDREN AND
22 ADULTS?

23 A. YES.

24 Q. COULD YOU PROVIDE AN EXPLANATION REGARDING ANY
25 CLINICAL DISTINCTIONS BETWEEN AN EVALUATION SPECIFICALLY

1 FOR ADHD OR A BROADER MENTAL HEALTH EVALUATION?

2 A. YES, I CAN.

3 SO IN RELATION TO, FIRST OF ALL, ADULTS
4 AND CHILDREN, YOU HAVE TO HAVE BOARD CERTIFICATION IN
5 CHILDREN BECAUSE CHILDREN DO NOT PRESENT THE SAME AS
6 ADULTS. CHILDREN ARE NOT MINI ADULTS, M-I-N-I, SO WE
7 HAVE TO MAKE SURE THAT WE UNDERSTAND HOW A CHILD
8 PRESENTS AS DIFFERENT FROM AN ADULT.

9 SO IN MY ASSESSMENTS, ONE OF THE THINGS
10 THAT I AM KNOWN FOR IS BEING ABLE TO FILTER THROUGH WHAT
11 A CHILD MAY PRESENT AND IN RELATION TO EVEN ADHD OR EVEN
12 OTHER MENTAL HEALTH DISORDERS, AS TO HOW AN ADULT WOULD
13 PRESENT.

14 FOR INSTANCE, ADULTS TEND TO HAVE
15 INATTENTION. MOST ADULTS, WHEN THEY HAVE ADHD, THEY
16 DON'T HAVE THE HYPER ACTIVITY PORTION WHICH WE SEE IN
17 CHILDREN. CHILDREN TEND TO HAVE HYPERACTIVITY,
18 INATTENTION, AND IMPULSIVITY. ADULTS TEND TO HAVE JUST
19 INATTENTION.

20 OF COURSE, THERE IS ALWAYS EXCEPTIONS TO
21 THE RULE, BUT THAT'S VERY IMPORTANT TO BE ABLE TO
22 DECIPHER BETWEEN HOW ADULTS AND CHILDREN -- AND I WILL
23 ALSO THIS ALSO, DR. KITCHENS, YOU ALSO MUST REMEMBER
24 THOSE THREE ELEMENTS FOR ADHD, IMPULSIVITY, INATTENTION,
25 AND HYPERACTIVITY, CAN PRESENT IN ANXIETY DISORDERS AND

1 IN MOOD DISORDERS, WHICH IS ONE OF THE MAJOR REASONS WHY
2 AN EXPERT SUCH AS MYSELF IS NEEDED, BECAUSE PRIMARY CARE
3 PHYSICIANS, OTHERS, THEY MAY MISTAKE THAT FOR SOMETHING
4 ELSE.

5 Q. AND THANK YOU FOR THAT.

6 AND I WOULD LIKE ALSO TO ASK YOU:

7 COULD YOU PROVIDE A DESCRIPTION REGARDING
8 THE TYPICAL TYPES OF INFORMATION AND SOURCES UTILIZED
9 DURING A COMPREHENSIVE PSYCHIATRIC EVALUATION?

10 A. YES. SO THE PARENT IS REQUIRED TO BE THERE.

11 WHEN YOU ARE DIAGNOSING ADHD, IT MUST BE
12 IN TWO DIFFERENT ENVIRONMENTS. IT CANNOT JUST OCCUR IN
13 ONE ENVIRONMENT. SO THE PARENT MAY COME IN AND COMPLAIN
14 ABOUT THE CHILD BEING INATTENTIVE, HYPERACTIVE, AND
15 IMPULSIVE, WHICH IS ONE OF THE ENVIRONMENTS, IF YOU
16 WOULD, BUT WE ALSO MUST BRING IN THE SCHOOL.

17 SO I AM IN CONTACT WITH -- OR THE STAFF
18 THAT WORKS WITH ME IS IN CONTACT WITH THE SCHOOL, SO WE
19 MUST SEE THESE DIFFERENT SYMPTOMS. I AM JUST LABELING
20 THOSE THREE AS GREAT THREE BIG CATEGORIES, IF I WOULD.

21 AND WE MUST SEE THOSE THREE BIG
22 CATEGORIES IN BOTH OF THOSE ENVIRONMENTS. IF YOU DON'T
23 SEE THEM IN BOTH ENVIRONMENTS THEN CANNOT DIAGNOSE ADHD.
24 SO YOU MUST SEE THEM IN BOTH, OTHERWISE, YOU KNOW, I AM
25 KNOWN TO BE ABLE TO DECIPHER BETWEEN A MENTAL HEALTH

1 DISORDER AND A BEHAVIORAL DISORDER, AND IF IT'S JUST A
2 BEHAVIORAL DISORDER, ITS PROBABLY ONLY SEEN IN ONE OF
3 THOSE ENVIRONMENTS.

4 Q. THANK YOU.

5 AND IN YOUR PROFESSIONAL OPINION, HOW
6 CLINICAL -- HOW CLINICALLY SIGNIFICANT IS THE PATIENT'S
7 PERSONAL INTAKE STATEMENT REGARDING THEIR CHIEF
8 COMPLAINT?

9 A. STATE THE QUESTION ONE MORE TIME?

10 Q. YES.

11 SO, IN YOUR PERSONAL PROFESSIONAL
12 OPINION, HOW IMPORTANT IS THE PATIENT'S INITIAL PERSONAL
13 STATEMENT WHEN THEY COME TO YOU FOR A CHIEF COMPLAINT?

14 A. VERY IMPORTANT.

15 Q. DR. SHEPHERD, AS A PSYCHIATRIST ARE YOU FAMILIAR
16 WITH THE DSM-5-TR?

17 A. YES.

18 Q. AND IN THE FIELD OF PSYCHIATRY, IS THE -- IS
19 THIS THE DSM-5-TR WIDELY RECOGNIZED AS A COMMONLY USED
20 DIAGNOSTIC TOOL?

21 A. YES, IT IS YOUR DIAGNOSTIC MANUAL.

22 Q. UH-HUH.

23 AND CAN YOU IDENTIFY FOR THE COURT THE
24 CRITERIA FOR DIAGNOSING A CHILD OR ADULT WITH ADHD?

25 A. ABSOLUTELY.

1 SO I AM GOING TO REPEAT MYSELF THE THREE
2 BIG CATEGORIES; INATTENTION, HYPERACTIVITY, AND
3 IMPULSIVITY. AND THOSE THREE CATEGORIES MUST BE SEEN IN
4 TWO DIFFERENT ENVIRONMENTS. IF IT'S FOR AN ADULT, THAT
5 MAY BE AT YOUR CHILD -- I'M SORRY, AT YOUR JOB, NOT YOUR
6 CHILD -- AT YOUR JOB, OR IN THE COMMUNITY OR AT HOME.

7 FOR A CHILD, YOU MAY SEE IT AT SCHOOL, AT
8 HOME, AND SO YOU LOOK AT THE THREE BIG CATEGORIES.

9 NOW, SOME PEOPLE MIGHT SAY, WELL, DR.
10 SHEPHERD, I HAVE SOME OF THOSE THINGS. DOES THAT MEAN I
11 HAVE ADHD? NO. YOU KNOW IT'S ADHD WHEN THERE IS
12 FUNCTIONAL IMPAIRMENTS WHICH DOES NOT ALLOW FOR THAT
13 PERSON TO BE ABLE TO OPERATE AT THEIR MAXIMUM POTENTIAL.

14 SO THAT'S WHERE THE DISORDER PART COMES
15 IN. DISORDER MEANS YOU ARE UNABLE TO FUNCTION PROPERLY.
16 SO THERE'S MANY TIMES PEOPLE ARE INATTENTIVE, BUT THE
17 DISORDER MEANS THAT YOU ARE NOT ABLE TO FUNCTION
18 PROPERLY. SO THIS IS WHERE THOSE THREE AREAS CAUSE THAT
19 FUNCTIONAL IMPAIRMENT.

20 Q. THANK YOU FOR THAT.

21 AND I WOULD LIKE TO ASK YOU HERE:

22 YOU SAID, ABOUT THESE TYPES OF FUNCTIONAL
23 IMPAIRMENTS, INATTENTIVENESS; THAT'S CORRECT?

24 A. YES.

25 Q. DR. SHEPHERD, I WOULD LIKE TO YOU ASK YOU:

1 IS IT POSSIBLE FOR INDIVIDUALS OVER THE
2 AGE OF SAY, 17, TO RECEIVE A DIAGNOSIS OF ADHD?

3 A. YES.

4 Q. AND CAN YOU EXPLAIN A LITTLE BIT ABOUT, IN
5 REFERENCE TO THE DSM-5-TR, WHAT SPECIFIC CRITERIA NEEDS
6 TO BE MET; IS IT THE SAME -- I KNOW FOR REDUNDANCY
7 PURPOSES, YOU TALKED A LITTLE BIT ABOUT THE CHILDREN --
8 BUT IS IT THE SAME THING FOR ADULTS?

9 A. SO, YES, IT'S THE SAME THING FOR ADULTS.

10 AS I MENTIONED EARLIER FOR ADULTS, IT'S A
11 LITTLE DIFFERENT, WE MAY NOT SEE THE HYPERACTIVITY. ITS
12 KIND OF WEIRD FOR ADULTS TO BE MOVING AROUND WITHOUT YOU
13 KNOW -- IT'S KIND OF SOCIALLY AWKWARD, IF YOU WOULD.

14 SO IN ADULTS THOUGH, WE SEE MORE OF THE
15 INATTENTIVE QUALITIES, AND SO WITHIN THE DSM THEY ARE
16 DIFFERENT SUB CATEGORIES OF ADHD; YOU HAVE THE COMBINED
17 TYPE, WE HAVE THE HYPERACTIVITY TYPE, YOU HAVE THE
18 INATTENTIVE TYPE.

19 SO FOR ADULTS WE WILL MORE COMMONLY SEE
20 ADHD INATTENTIVE TYPE, WHICH IS A SPECIFIC SUB CATEGORY
21 WHERE THE INATTENTION THAT OCCURS WITHIN THAT PERSON
22 DOES NOT ALLOW FOR HIM OR HER TO BE ABLE TO OPERATE AT
23 THEIR MAXIMUM ATTENTION OR BE ABLE TO FUNCTION AT THEIR
24 BEST ABILITY, I WILL SAY IT THAT WAY.

25 Q. THANK YOU, DR. SHEPHERD.

1 EVIDENCE WITH THE HIGHLIGHTING, WHICH OBVIOUSLY IS NOT
2 OFFICIAL AND NOT THE ORIGINAL DOCUMENT.

3 I WOULDN'T -- I THINK I WOULD ALLOW -- I
4 WOULDN'T MIND -- I WOULD BE OKAY WITH DR. KITCHENS USING
5 THIS RIGHT NOW FOR SOME OF HIS QUESTIONS AND WE CAN SORT
6 OF SEE HOW IT PLAYS OUT, BUT I DON'T KNOW -- IT DOES NOT
7 HAVE A -- IT DOESN'T HAVE A SOURCE, BUT I DON'T THINK IT
8 COMES FROM EITHER ONE OF THESE JUST LOOKING AT THE PAGE
9 NUMBERS.

10 THE COURT: WELL, I AM NOT WORRIED ABOUT
11 THE HIGHLIGHTING, SINCE YOU TOLD ME ABOUT THAT, NOW I
12 KNOW, SO THAT'S NOT A CONCERN, BUT THE -- AS FOR
13 ADMITTING THE DOCUMENT, DR. KITCHENS, WHY DON'T YOU -- I
14 WILL JUST DEFER A RULING ON THAT, I WILL LET YOU
15 CONTINUE YOUR QUESTING ABOUT THE DOCUMENT IF YOU WOULD
16 AND FIGURE IT OUT LATER.

17 DR. KITCHENS: YES. AND AS YOU CAN SEE
18 HERE, YOUR HONOR, IT'S THE DSM-5 5TH EDITION THERE.

19 THE COURT: OH, I SEE. NOW, IS THIS IS A
20 970 PAGE DOCUMENT?

21 DR. KITCHENS: NO, SIR, BUT THIS IS AN
22 EXCERPT FROM IT, FROM THE CHAPTER. YOU CAN REMOVE IT.

23 MS. MEW: OKAY. YES, I SEE THAT. I SEE
24 THAT. BUT THAT'S THE DSM 5, OKAY. THAT'S FINE. SORRY,
25 DR. KITCHENS. I WAS LOOKING AT THE DSM-5-TR.

1 THE COURT: SO PX 48 IS ADMITTED.

2 (PLAINTIFF EXHIBIT 48 IS ADMITTED INTO
3 EVIDENCE.)

4 THE COURT: GO AHEAD.

5 BY DR. KITCHENS:

6 Q. SO DR. SHEPHERD, I WOULD LIKE TO ASK YOU, WITH
7 -- CONCERNING WITH THE DSM-5:

8 WHAT ARE THE KEY -- WHAT ARE SOME KEY
9 CONSIDERATIONS CLINICIANS IN YOUR POSITION SHOULD KEEP
10 IN MIND WHEN UTILIZING THIS PARTICULAR TOOL?

11 A. SO ANY DIAGNOSTIC MANUAL IS A GUIDELINE. SO
12 WHEN WE ARE DIAGNOSING, EVALUATING, ASSESSING, WE NEED
13 TO HAVE GUARDRAILS, AND SO A DIAGNOSTIC MANUAL IS THE
14 GUARDRAILS THAT ALLOW US TO FOCUS AND TO CONCENTRATE ON
15 KNOWING HOW TO BE ABLE TO PROCEED WITH THE EVALUATION
16 ASSESSMENT.

17 AS ANY CASE, AS YOU ALL ARE LAWYERS AND
18 AS PHYSICIANS, WE KNOW THAT THERE IS ALWAYS OUTLIERS.
19 AND SO WITHIN THAT THERE MAY BE SPECIFIC THINGS THAT
20 HAPPEN WITHIN THAT PARTICULAR CASE, OR IN MY ROUND A
21 PATIENT PROFILE THAT I NEED TO BE ABLE TO TAKE THAT IN
22 TO ACCOUNT. SO THE DIAGNOSTIC MANUAL ALLOWS FOR ME TO
23 BE ABLE TO HAVE THESE GUARDRAILS, ASSESSMENTS, SO I WILL
24 BE ABLE TO HAVE A STANDARD WAY OF EVALUATING, AND
25 ASSESSING.

1 THE DIAGNOSTIC MANUAL IS ALSO IMPORTANT
2 FOR RESEARCH. SO WHEN YOU ARE DOING RESEARCH, YOU HAVE
3 TO HAVE A STANDARD, HAVE TO HAVE A GOLD STANDARD. SO IN
4 CLINICAL PRACTICE, YOU HAVE THAT BUT THEN YOU ALSO MUST
5 UTILIZE WHAT IS HAPPENING IN FRONT OF YOU.

6 SO EVERYTHING THAT PRESENTS IN FRONT OF
7 YOU IS NOT GOING TO BE GOLD STANDARD. PEOPLE COME IN,
8 YOU HAVE TO BE ABLE TO DECIPHER WHAT IS HAPPENING AND
9 THIS ALLOWS YOU TO SET THE BAR SO THAT YOU CAN FIGURE
10 WHAT IS HAPPENING. HOPEFULLY THAT MAKES SENSE.

11 Q. YES, IT DOES.

12 DR. SHEPHERD, BESIDES THIS -- THIS
13 PARTICULAR TOOL, ARE THERE ANY OTHER DIAGNOSTIC TOOLS OR
14 CRITERIAS COMMONLY UTILIZED BY PSYCHIATRISTS IN THEIR
15 CLINICAL PRACTICE FOR -- FOR DIAGNOSTING(SIC) ADHD?

16 A. YES, THERE ARE SEVERAL. WE HAVE THE CONNERS
17 RATING SCALE, WE HAVE THE VANDERBILTS, WE HAVE THE
18 MATSON, I BELIEVE THAT'S -- SO THERE IS VARIOUS
19 DIFFERENT SCALES THAT PSYCHIATRISTS CAN USE.

20 AND AGAIN, THESE ARE THINGS THAT
21 RESEARCHERS HAVE UTILIZED AND THEN WE, IN CLINICAL
22 PRACTICE, WE UTILIZE THE STANDARDS AS THEY HAVE SHOWN
23 CREDIBILITY AND INTEGRITY.

24 Q. THANK YOU SO MUCH FOR THAT.

25 AND AS YOU HAVE SAID EARLIER, THAT IT'S

1 USED IN A VARIETY OF DIFFERENT WAYS, AND IN THAT
2 PARTICULAR FIELD. SO I WOULD LIKE TO ASK YOU, JUST FOR
3 CLARIFICATION:

4 ARE THESE METHODS -- ARE THOSE METHODS,
5 PRINCIPLES, GENERALLY ACCEPTED IN THE MEDICAL FIELD?

6 A. YES.

7 Q. AND ARE THESE METHODS RELIABLE?

8 A. YES.

9 Q. THANK YOU SO MUCH FOR THAT. LET ME SEE HERE.

10 IF WE CAN BRING UP EXHIBIT 27, PLEASE?

11 DR. SHEPHERD, CAN YOU SEE THE DOCUMENT ON
12 THE SCREEN IN FRONT OF YOU?

13 A. YES, I CAN.

14 Q. AND CAN YOU IDENTIFY WHAT YOU ARE LOOKING AT
15 HERE?

16 A. IT IS THE MOXO D-CPT REPORT.

17 Q. THANK YOU. AND IF WE CAN ZOOM IN A LITTLE BIT,
18 PLEASE, ON IT?

19 CAN USMLE THE PATIENT'S NAME?

20 A. YES, MARKCUS KITCHENS.

21 Q. THANK YOU. AND IF WE CAN SCROLL DOWN PLEASE,
22 SOME -- HERE, TO SHOW THIS CHART.

23 DR. SHEPHERD, BY LOOKING AT THIS CHART,
24 WHAT CAN YOU GATHER FROM IT, WHICH WAS CONDUCTED FROM
25 THIS STUDY?

1 A. FROM WHAT I GATHER FROM THIS STUDY IS THAT THERE
2 ARE SOME DEFICITS IN THESE FOUR AREAS. THE FOUR AREAS THAT ARE
3 MENTIONED HERE ARE ATTENTIVENESS, TIMELINESS,
4 IMPULSIVENESS, AND HYPERACTIVITY, WHICH ARE THREE OF THE
5 FOUR AREAS THAT I ALREADY MENTIONED EARLIER.

6 AND ACCORDING TO THIS, THERE'S DEFICITS
7 IN ALL OF THOSE AREAS, BUT THE MAJOR DEFICIT
8 INATTENTIVENESS.

9 Q. THANK YOU, DR. SHEPHERD, FOR THAT.

10 YOUR HONOR, I WOULD LIKE TO HAVE THIS
11 DOCUMENT ENTERED INTO THE RECORD AS PX 27?

12 MS. MEW: NO OBJECTION, YOUR HONOR.

13 THE COURT: PX 27 IS ADMITTED.

14 (PLAINTIFF EXHIBIT 27 IS ADMITTED INTO
15 EVIDENCE.)

16 BY DR. KITCHENS:

17 Q. DR. SHEPHERD, DURING MEDICAL SCHOOL AND
18 RESIDENCY, DO PSYCHIATRISTS RECEIVE TRAINING ON
19 ASSESSING WHETHER A PATIENT MAY BE MALINGERING?

20 A. YES.

21 Q. AND CAN YOU EXPLAIN A LITTLE BIT IN DETAIL OF
22 THIS -- THIS TRAINING?

23 A. YES. TRAINING, AND THEN I SAW IT FIRSTHAND.

24 SO MALINGERING IS ONE OF THOSE AREAS IN
25 PSYCHIATRY THAT WE STUDY IN WHERE A PERSON MAY BE DRUG

1 SEEKING OR -- THAT'S ONE OF THE AREAS, BUT I HAVE ALSO
2 SEEN WHERE A PERSON IS ACTUALLY LOOKING TO BE ABLE TO
3 HAVE -- WHERE A PERSON WILL WANT TO GET LIKE, SOCIAL
4 SECURITY DISABILITY BENEFITS. THIS IS THINGS THAT WE DO
5 RIGHT NOW WHERE PEOPLE COME IN, TRY TO FALSIFY WHAT IS
6 HAPPENING WITH THEM, FLMA.

7 THESE ARE SITUATIONS THAT I DEAL WITH ON
8 A DAILY BASIS. I AM TRYING TO GIVE SOME PRACTICALITY TO
9 WHAT I SEE ON AN EVERYDAY BASIS. AND SO WHAT I MEAN BY
10 MALINGERING IS THAT THESE PERSONS, THEY WILL SAY THEY
11 HAVE THESE SYMPTOMS OR DISORDERS OR EVEN SICKNESS, TO BE
12 ABLE TO FALSIFY OR GET BENEFITS FOR THEIR FAMILY OR FOR
13 THEM OR BE ABLE TO GET OUT OF WORK.

14 AND SO YES, WE HAVE THOSE TYPE OF THINGS
15 THAT WE SEE. HOW -- HOW I WORK THROUGH THEM IS THAT I
16 -- WE MAKE SURE THAT WE TAKE OUR TIME IN ASSESSING THE
17 PATIENTS. TIME IS ONE OF THE BIGGEST AREAS OF HOW YOU
18 WILL KNOW. AND SO OUR PRACTICE WE DO NOT SIGN ANY OF
19 THOSE TYPES OF FORMS FOR AT LEAST SIX MONTHS.

20 IF A PERSON IS GOING TO WORK WITH US FOR
21 SIX MONTHS YOU CAN FIGURE OUT WHAT IS GOING ON AND THAT
22 HELPS OUT THOSE WHO ARE MALINGERING. I HAVE SEEN IT
23 EVEN IN THE INPATIENT UNIT WHERE PEOPLE WILL LITERALLY
24 FALL OUT, FLOP ON THE FLOOR, AND ME NOT RESPOND TO THEM
25 ACTUALLY THEY WILL STOP THEIR ACTIONS.

1 SO THESE ARE DIFFERENT THINGS THAT I HAVE
2 SEEN ON THE PRACTICALITY SIDE. I THINK THAT THAT
3 RESPONSE DESERVED MORE EXAMPLES THAN JUST A TEXTBOOK
4 RESPONSE.

5 Q. AND -- THANK YOU FOR THAT. AND I WOULD ALSO
6 LIKE TO ASK YOU EVEN MORE, IN FOLLOW UP TO THAT. SO FOR
7 CLARIFICATION:

8 DO PSYCHIATRISTS AUTOMATICALLY CATEGORIZE
9 PATIENTS AS DRUG SEEKING WHEN THEY REQUEST MEDICATION
10 FOR TREATMENT?

11 A. NO.

12 Q. AND WHY IS THAT?

13 A. I WOULD HOPE THAT WE WOULD BE PERSONS WHO TRUST
14 THAT PEOPLE WHO ARE COMING IN ARE TRUTHFUL AND ACTUALLY
15 SEEKING OUT CARE, AND SO I WOULD BE OF A PERSON TO SAY,
16 LET ME SEE HOW I CAN HELP YOU. THAT'S WHY WE GO IN THE
17 FIELD, NOT TO SIT HERE AND POINT AND SAY, YOU ARE DRUG
18 SEEKING, YOU'RE MALINGERING, OR YOU'RE A BAD PERSON,
19 YEAH, THAT DOES NOT MAKE SENSE.

20 Q. AND I WOULD LIKE TO PULL UP AT THIS TIME
21 EXHIBIT 37?

22 MS. MEW: JUST FOR THE RECORD, DR.
23 KITCHENS, IF YOU WILL SAY PLAINTIFF'S EXHIBIT 37,
24 THAT'LL JUST HELP.

25 DR. KITCHENS: I AM SO SORRY, MS. MEW.

1 YES, PX 37. IF WE CAN ZOOM IN, PLEASE?

2 A LITTLE BIT MORE.

3 DR. SHEPHERD, CAN YOU SEE ON THE SCREEN
4 HERE, OR READ ON THE SCREEN?

5 A. YES, I CAN SEE IT.

6 Q. OKAY. AND WHAT -- WHAT IS THIS DOCUMENT THAT
7 YOU ARE LOOKING AT HERE?

8 A. ITS ENTITLED, "A PROGRESS NOTE," AND IT LOOKS
9 LIKE IT IS A -- AN EVALUATION.

10 Q. AND CAN YOU -- FOR THE RECORD, CAN YOU READ WHAT
11 THE CHIEF COMPLAINT IS?

12 A. "ANXIETY AND DEPRESSION."

13 Q. THANK YOU. AND CAN WE SCROLL DOWN, PLEASE? A
14 LITTLE BIT MORE. STOP, PLEASE. LET'S SEE, I AM HAVING
15 A HARD TIME SEEING AS WELL, BUT THAT'S RIGHT.

16 YES, THERE.

17 DR. SHEPHERD, CAN YOU READ FOR THE COURT
18 THE HISTORY OF PRESENT ILLNESS?

19 A. YES.

20 "MARKCUS KITCHENS PRESENTS TODAY FOR
21 MEDICATION MANAGEMENT FOLLOW UP. REPORTS THAT HE HAS
22 BEEN DOING WELL OVERALL. CONTINUES TO STUDY FOR
23 UPCOMING EXAM THAT IS REQUIRED TO OBTAIN CERTIFICATION
24 IN ORDER TO START RESIDENCY. FEELS THAT HE CONTINUES TO
25 BE OVERWHELMED WITH THE PRESSURE OF PASSING THESE EXAMS,

1 HAS BEEN STUDYING FULL TIME SINCE LAST VISIT. TEST IS
2 SCHEDULED FOR NEXT WEEK."

3 "FEELS THAT OVERALL ANXIETY AND
4 DEPRESSION IS WELL CONTROLLED WITH THE MEDICATION.
5 ADMITS THAT HE HAS ALWAYS BEEN DRIVEN TO COMPLETE GOALS
6 BUT FEELS THAT MEDICATION HAS ALLOWED HIM TO BETTER
7 VERBALIZE AND DISPLAY EMOTIONS."

8 "WIFE IS A HUGE SUPPORT FOR HIM. HAS
9 HISTORY OF ADHD, DOES COMPLAIN OF CONTINUED SYMPTOMS
10 ASSOCIATED WITH ADHD. HAS BEEN ON CURRENT COURSE OF
11 ADDERALL FOR SEVERAL YEARS. VERBALIZES THAT HE DOES NOT
12 TAKE MEDICATION ON WEEKENDS OR WHEN HE DOES HAVE TO
13 COMPLETE MENTALLY CHALLENGING TASKS."

14 "HAS TRIED SEVERAL INTERVENTIONS AT HOME,
15 SUCH AS USING HEADPHONES THAT BLOCK OUT NOISE, SPECIALTY
16 LIGHTING, AND SOOTHING SOUND MACHINES. ALSO TRIED OTC,"
17 WHICH IS THE OVER-THE-COUNTER, "ACTIVE MIND SUPPLEMENT,
18 THAT HE HAS FOUND CAN BE BENEFICIAL AT TIMES."

19 "SLEEPING WELL AT NIGHT, BUT DENIES
20 SLEEPING EXCESSIVE AMOUNTS. DENIES ANY SI, OR HI,"
21 WHICH STANDS FOR SUICIDAL IDEATION OR HOMICIDAL
22 IDEATION, "OR A/V," WHICH IS AUDITORY/VISUAL
23 HALLUCINATIONS.

24 Q. THANK YOU, DR. SHEPHERD. YOU CAN STOP THERE.

25 DR. SHEPHERD, I WOULD LIKE TO ASK YOU:

1 BASED ON THE DOCUMENTATION THAT YOU JUST
2 READ OR PRESENTED, ON THE SCREEN HERE, FROM THAT
3 PROGRESS NOTE, COULD YOU PROVIDE YOUR -- EXCUSE ME,
4 SORRY.

5 BASED ON THE EXHIBIT HERE DISPLAYED ON
6 THE SCREEN, COULD YOU PROVIDE YOUR PROFESSIONAL
7 ASSESSMENT REGARDING ITS NORMALITY OR ABNORMALITY?

8 A. IN REGARDS TO NORMALITY, THIS IS A TYPICAL --
9 THE WAY IN WHICH A TYPICAL PROGRESS NOTE SHOULD BE
10 SCRIPTED OR WRITTEN.

11 IT DESCRIBES WHAT IS HAPPENING TO YOU,
12 YOU BEING THE PERSON, THE PATIENT. SO THIS IS WHAT WE
13 WOULD -- AND IT CONTAINS ALL OF THE NECESSARY COMPONENTS
14 THAT OCCURS IN A FOLLOW-UP EXAMINATION. SO THIS IS A
15 TYPICAL PROGRESS NOTE.

16 Q. OKAY. THANK YOU FOR THAT.

17 AT THIS TIME, YOUR HONOR, I WOULD LIKE TO
18 ENTER INTO THE RECORD PX 37?

19 MS. MEW: NO OBJECTION, YOUR HONOR.

20 THE COURT: PX 37 IS ADMITTED.

21 (PLAINTIFF EXHIBIT 37 IS ADMITTED INTO
22 EVIDENCE.)

23 BY DR. KITCHENS:

24 Q. I WOULD LIKE TO ASK YOU NOW, DR. SHEPHERD:

25 WHAT TYPE OF FACTORS DO YOU CONSIDER WHEN

1 YOU ARE DETERMINING THE APPROPRIATE DOSAGE OF MEDICATION
2 TO PRESCRIBE TO A PATIENT WITH A NEW DIAGNOSIS OF ADHD?

3 A. SO NUMBER ONE, WHEN DIAGNOSING -- SO WE HAVE
4 CONFIRMED IN THE TWO DIFFERENT AREAS THAT THE CHILD OR
5 THE ADULT HAS THE DIAGNOSE, AND THEN WE WILL REVIEW OVER
6 THE PHARMACOLOGICAL TREATMENTS.

7 SO THERE ARE MULTIPLE PHARMACOLOGICAL
8 TREATMENTS. NUMBER ONE, I ASKED IF THE PERSON IS
9 COMFORTABLE WITH TAKING MEDICATION. SO FIRST OFF, I
10 HAVE TO ADDRESS THAT.

11 AND THEN IF HE OR SHE IS COMFORTABLE,
12 NUMBER TWO, WE TALK ABOUT HISTORY. SO MANY TIMES
13 FAMILIES HAVE ALREADY BEEN EXPOSED TO MEDICATIONS. SO I
14 HAVE TO BE ABLE TO TALK ABOUT THE STIGMA OF MEDICATION,
15 BE ABLE TO SEE WHETHER OR NOT -- HAVE THERE BEEN BAD
16 REACTIONS WITH OTHER FAMILY MEMBERS, AND THINGS LIKE
17 THAT.

18 SO WE HAVE TO DEAL WITH ALL OF THOSE
19 THINGS BEFORE EVEN PRESCRIBING THE MEDICATION. AND THEN
20 ONCE WE HAVE SORTED THROUGH THAT, WE WILL LOOK AT --
21 THERE'S TWO DIFFERENT DERIVATIVES, THERE'S AN
22 AMPHETAMINE AND THERE'S A METHYLPHENIDATE DERIVATIVE.

23 IN MY BOOK THEY ARE JUST ABOUT AS
24 EFFECTIVE. AND SO WE WOULD REVIEW OVER THE SIDE
25 EFFECTS. THE SIDE EFFECTS ARE VERY SIMILAR IN -- IN THE

1 ADHD MEDICATIONS.

2 ONE THING THAT IS VERY DIFFERENT FROM ANY
3 OTHER MEDICATION IN PSYCHIATRY FOR ADHD MEDICATIONS, IS
4 THAT ADHD MEDICATIONS ARE AS POTENT AND POWERFUL IN THE
5 SMALLEST DOSES AS THE LARGEST DOSE. YOU DON'T SEE THAT
6 IN ANY OTHER MEDICATION IN PSYCHIATRY.

7 SO WHEN I GIVE A SMALL DOSE OF
8 METHYLPHENIDATE, IT IS JUST AS POWERFUL AS THE LARGEST
9 DOSE, AND SO WHEN YOU GIVE THE LARGER DOSES, YOU DO THAT
10 SO IT WILL STAY IN THE SYSTEM LONGER. ALL RIGHT?

11 AND SO MANY TIMES IN THE INPATIENT UNIT
12 WE MAY GO OFF OF THE WEIGHT TO SEE WHERE WE MAY START
13 AT, BUT ONCE WE START AT THAT STARTING DOSE WE CONTINUE
14 TO ADD ON, BECAUSE TYPICALLY ADHD MEDICATION WILL LAST
15 FOR ABOUT 10 TO 12 HOURS. 12 HOURS IS PROBABLY THE MAX
16 YOU WILL GET.

17 VYVANSE, FOR INSTANCE, IS THE ONE THAT
18 PROBABLY LASTS THE LONGER 12 HOURS, BUT 10 TO 12 HOURS.
19 IF IT ONLY LASTS FOR FIVE HOURS YOU KNOW YOU NEED TO GO
20 UP TO THE NEXT STEP. SO THESE ARE DIFFERENT THINGS THAT
21 I EXPLAIN TO THE FAMILY SO THEY UNDERSTAND WHAT IS
22 HAPPENING. SO THAT TAKES A MINUTE TO BE ABLE TO DO.

23 Q. THANK YOU FOR THAT. MOVING RIGHT ALONG NOW, I
24 WOULD LIKE TO ASK YOU, BECAUSE YOU STATED EARLIER THAT
25 YOU REVIEWED THE DOCUMENTATION THAT WAS SUBMITTED TO YOU

1 AND I WOULD LIKE TO ASK YOU:

2 AFTER YOU HAVE THOROUGHLY REVIEWED THE
3 DOCUMENTATION THAT I SUBMITTED WITH MY REQUEST TO THE
4 NBME FOR THOSE REASONABLE ACCOMMODATIONS, WERE THERE ANY
5 SPECIFIC ACTIVE DIAGNOSES MENTIONED IN THE PROVIDED
6 DOCUMENT?

7 MS. MEW: OBJECTION TO FORM, YOUR HONOR;
8 THE REFERENCE TO REASONABLE ACCOMMODATIONS.

9 THE COURT: OVERRULED.

10 BY DR. KITCHENS:

11 Q. GO AHEAD DR. SHEPHERD?

12 A. STATE THE QUESTION ONE MORE TIME? I GET CAUGHT
13 UP SOMETHING ABOUT THAT. SORRY.

14 Q. THAT IS A-OKAY.

15 AFTER THOROUGHLY REVIEWING THE
16 DOCUMENTATION SUBMITTED WITH MY REQUEST TO THE NBME, FOR
17 REASONABLE ACCOMMODATIONS, WERE THERE ANY SPECIFIC
18 ACTIVE DIAGNOSES MENTIONED IN THE PROVIDED
19 DOCUMENTATION?

20 A. YES.

21 Q. AND DO YOU REMEMBER WHAT THOSE ARE?

22 A. YES. ADHD, AND ANXIETY DISORDER.

23 Q. THANK YOU. I WANT TO PULL UP THE EXHIBIT HERE.
24 THIS IS EXHIBIT NUMBER PX 02. AND IF WE CAN SCROLL --
25 DR. SHEPHERD -- SORRY, CAN YOU ZOOM IN, PLEASE?

1 DR. SHEPHERD, DO YOU SEE THE DOCUMENT
2 HERE ON THE SCREEN BEFORE YOU?

3 A. YES.

4 Q. AND WHAT IS THIS DOCUMENT THAT USMLE HERE?

5 A. IT IS A REQUEST FOR A TEST ACCOMMODATIONS
6 THROUGH THE UNITED STATES MEDICAL LICENSING EXAMINATION.

7 Q. THANK YOU. AND CAN YOU SCROLL DOWN, PLEASE?
8 KEEP GOING. SCROLL UP, SORRY. SCROLL UP?

9 DR. SHEPHERD -- THANK YOU. YES, HERE.

10 DR. SHEPHERD, ON THIS DOCUMENTATION HERE,
11 DOES THIS CORRELATE WITH THE TESTIMONY YOU JUST GAVE?

12 A. YES.

13 Q. THANK YOU.

14 DR. KITCHENS: YOUR HONOR, AT THIS TIME I
15 WOULD LIKE TO ENTER THIS INTO THE RECORD, IF IT HAS NOT
16 BEEN ALREADY, AS PX --

17 THE COURT: YES, I HAVE PX 02 ALREADY
18 ADMITTED.

19 DR. KITCHENS: ALL RIGHT. THANK YOU. WE
20 CAN EXIT OUT OF THIS ONE. AND IF WE COULD PULL UP THE
21 OTHER APPLICATION, PLEASE. I THINK IT'S PROBABLY PX 03.

22 THE COURT: YES, IF THAT'S PX 3, THAT'S
23 ALSO ADMITTED.

24 DR. KITCHENS: OKAY.

25 THE COURT: MEANING THAT YOU CAN PROCEED

1 RIGHT TO THE QUESTIONS. YOU DON'T HAVE TO ASK TO MOVE
2 IT IN.

3 DR. KITCHENS: OKAY. THANK YOU, SIR.
4 THANK YOU, YOUR HONOR.

5 BY DR. KITCHENS:

6 Q. IF YOU WOULD SCROLL THROUGH IT PLEASE, JUST FOR
7 CLARIFICATION FOR THE RECORD. ALL RIGHT. AND IF YOU GO
8 UP, PLEASE, JUST A LITTLE BIT. TO THE -- HERE, PLEASE.

9 DR. SHEPHERD, DOES THIS -- DOES THIS
10 WRITING HERE CORRELATE WITH YOUR TESTIMONY YOU JUST GAVE
11 ALSO?

12 A. YES.

13 Q. THANK YOU. YOU MAY CLOSE THIS PARTICULAR
14 DOCUMENT.

15 DR. SHEPHERD, HOW FREQUENTLY DO PATIENTS
16 GET REFERRED TO YOU FOR EVALUATIONS REGARDING POTENTIAL
17 ADHD SYMPTOMS?

18 A. HOW FREQUENTLY? AT LEAST ONCE A DAY.

19 YEAH, I MEAN, I HAVE TAKEN CARE OF
20 THOUSANDS OF CHILDREN HERE IN MARYLAND, SO THAT'S ONE OF
21 MY STRONG POINTS.

22 Q. THANK YOU.

23 SO -- AND -- SORRY.

24 SO, DR. SHEPHERD, WHEN YOU HAVE A NEW
25 PATIENT, YOU SPOKE A LITTLE BIT -- YOU SPOKE ABOUT THIS

1 A LITTLE BIT EARLIER, BUT I WANT TO MAKE SURE FOR THE
2 RECORD IT IS CLEAR HERE THAT, WHEN YOU -- WHEN A NEW
3 PATIENT SEEKS TREATMENT FOR ADHD OR ADD, IS THERE AN --
4 IS THEIR EXTENSIVE MEDICAL HISTORY TAKEN INTO ACCOUNT
5 DURING THE EVALUATION PROCESS?

6 A. YES.

7 Q. AND CAN YOU ELABORATE ON THAT?

8 A. SO WHEN A PERSON COMES IN FOR A PSYCHIATRIC
9 EVALUATION, WE SET ASIDE AT LEAST AN HOUR OF THAT -- OF
10 TIME THAT IS SPENT WITH ME. IN THAT WE TALK ABOUT THE
11 VARIOUS COMPONENTS OF THE EVALUATION, THE CHIEF
12 COMPLAINTS AS YOU SHOWN EARLIER, THE HISTORY OF PRESENT
13 ILLNESS.

14 IN THAT THERE IS A PSYCHIATRIC REVIEW OF
15 SYMPTOMS, AND IN DOING SO YOU MUST DO THAT, AS I
16 EXPLAINED EARLIER, BECAUSE A CHIEF COMPLAINT OF
17 INACTIVITY OR -- INATTENTIVENESS -- THERE WE GO --
18 HYPERACTIVITY, OR IMPULSIVITY, COULD ACTUALLY MEAN
19 SOMETHING ELSE; ANXIETY AND/OR MOOD DISORDERS.

20 SO YOU MUST GO THROUGH THAT PSYCHIATRIC
21 REVIEW OF SYMPTOMS, YOU GO THROUGH A MEDICAL HISTORY,
22 PAST MEDICAL HISTORY, PAST PSYCHIATRIC HISTORY, YOU LOOK
23 UP FAMILY HISTORY, SOCIAL HISTORY, DEVELOPMENTAL
24 HISTORY, PARTICULARLY FOR CHILDREN.

25 SO ALL OF THESE DIFFERENT THINGS ARE DONE

1 DURING THAT HOUR ASSESSMENT. AND THEN WE WILL CONDUCT
2 OUR WORK WITH THE OTHER THERAPIST, IN MAKING SURE THAT
3 WE GET OUR OBJECTIVE ASSESSMENT, SUCH AS THE RATING
4 SCALES THAT WE HAD SHOWN EARLIER TODAY. SO ALL OF THESE
5 THINGS TAKE PLACE IN THOSE ASSESSMENTS BEFORE A
6 DIAGNOSES IS CONFIRMED.

7 Q. AND ARE THESE -- THIS INFORMATION THAT YOU ARE
8 RECEIVING, WHO -- HOW ARE YOU RECEIVING THIS
9 INFORMATION; WHO FROM?

10 A. MULTIPLE SOURCES. SO IF IT IS A CHILD, THE
11 CHILD, THE PARENTS, LEGAL GUARDIAN, AND ANYONE WHO KNOWS
12 THE CHILD, SO TEACHERS, THE THERAPIST WHO WORKS WITH THE
13 FAMILY. IF IT'S AN ADULT AND THE ADULT -- THE ADULT IS
14 MARRIED, THE SPOUSE OR OTHER PEOPLE WHO THE ADULT ALLOWS
15 FOR US TO BE ABLE TO TALK TO. SO IT'S NOT A ONE PERSON
16 SOURCE, IF YOU WOULD.

17 Q. THANK YOU, DR. SHEPHERD.

18 SO IN CASES WHERE A PATIENT HAS HAD A
19 LONGSTANDING -- A LONGSTANDING HISTORY OF BEING
20 PRESCRIBED THE DRUG ADDERALL AND HAS FOUND IT
21 BENEFICIAL, WHAT FACTORS WOULD YOU CONSIDER WHEN
22 DETERMINING WHETHER TO CONTINUE PRESCRIBING THAT
23 MEDICATION TO THAT PATIENT?

24 A. ABSOLUTELY. SO IF A PERSON COMES IN AND IS
25 ALREADY TAKING MEDICATION, I ASK THAT PERSON, IS THE

1 MEDICATION WORKING, HOW WELL DOES IT WORK, IS IT
2 RELIEVING THE FUNCTIONAL IMPAIRMENTS THAT THE MEDICATION
3 IS THERE TO HELP TO DO.

4 AND SO IF THERE IS AN AFFIRMATIVE, YES,
5 TO THOSE QUESTIONS, THAT THE PERSON IS HAPPY WITH THE
6 MEDICATION, THAT IT IS WORKING, THEN TYPICALLY I WILL
7 KEEP THAT PERSON ON THAT MEDICATION AT THAT CURRENT
8 DOSE.

9 Q. THANK YOU.

10 AND -- AND FOLLOWING THAT QUESTION, WHEN
11 YOU ARE CONSIDERING PRESCRIBING MEDICATIONS LIKE
12 ADDERALL, DO YOU BELIEVE IT IS IMPORTANT TO TAKE INTO
13 ACCOUNT THE DURATION OF TIME THAT THE PATIENT HAS BEEN
14 FORMERLY PRESCRIBED THE MEDICATION.

15 A. ABSOLUTELY, YES.

16 Q. OKAY. THANK YOU.

17 HERE, I WOULD LIKE TO BRING UP EXHIBIT PX
18 46.

19 AND, DR. SHEPHERD, DO YOU SEE THE
20 DOCUMENT IN FRONT OF YOU?

21 A. YES, SIR.

22 Q. AND CAN YOU DESCRIBE THIS DOCUMENT HERE?

23 A. IT IS A PROGRESS NOTE FROM BAPTIST HEALTH, WITH
24 YOUR NAME ON IT.

25 Q. OKAY. THANK YOU. AND IF WE CAN SCROLL DOWN?

1 ALL RIGHT. STOP PLEASE, CAN YOU GO BACK UP A LITTLE
2 BIT? RIGHT HERE.

3 AND DR. SHEPHERD, DO YOU SEE WHERE IT
4 SAYS "MEDICATIONS" THERE?

5 A. YES.

6 Q. AND WHAT IS THE FIRST -- WHAT MEDICATIONS DO YOU
7 SEE HERE?

8 A. I SEE ADDERALL, 20 MILLIGRAMS, TABLET. I SEE
9 LEXACOT, I CAN'T PRONOUNCE THAT WORD -- LEXCOCATIEL,
10 VETORALL, WHICH IS A CORTICOSTEROID, MULTI VITAMIN, AND
11 PROPRANOLOL.

12 Q. THANK YOU.

13 AND FOR THE -- AND YOU SAID EARLIER, JUST
14 NOW, ABOUT THE ADDERALL.

15 CAN YOU -- CAN YOU READ THE DOSAGE OF
16 THAT AGAIN?

17 A. IT'S ADDERALL, 20-MILLIGRAM TABLET.

18 Q. AND HOW OFTEN IS IT SUPPOSED TO BE TAKEN?

19 A. TAKE ONE TABLET BY MOUTH TWO TIMES A DAY.

20 Q. SO THAT'S A TOTAL OF 40 MILLIGRAMS OF ADDERALL;
21 WOULD YOU AGREE TO THAT?

22 A. YES.

23 Q. SORRY ABOUT THAT.

24 ALL RIGHT. AND IF WE CAN SCROLL UP,
25 PLEASE, TO THE -- HERE.

1 DO YOU SEE -- SORRY.

2 SO ON THE SECOND PARAGRAPH, THE NEXT TO
3 THE LAST LINE, IT SAYS "APPETITE."

4 A. YES.

5 Q. YES.

6 AND CAN YOU READ THAT LAST LINE?

7 A. "APPETITE AND WEIGHT ARE FAIRLY STABLE.
8 ALTHOUGH PATIENT HAS NOTICED HE HAS BEEN CRAVING SWEETS
9 AND SODAS MUCH MORE THAN NORMAL RECENTLY, HE HAS ALSO
10 FOUND HIMSELF MAKING IMPULSE PURCHASES TO CHEER HIMSELF
11 UP."

12 Q. THANK YOU.

13 AND ALSO, CAN YOU -- IF YOU CAN SCROLL TO
14 THE -- SCROLL UP SOME. YES. ALL RIGHT. NO, SORRY,
15 SCROLL DOWN, SCROLL DOWN, SCROLL DOWN. YES, KEEP GOING.
16 STOP HERE, PLEASE. SCROLL UP. STOP HERE.

17 DR. SHEPHERD, CAN USMLE WHERE IT SAYS,
18 "PAST MEDICAL HISTORY"?

19 A. YES.

20 Q. AND DO YOU SEE WHERE IT SAYS, "PAST SURGICAL
21 HISTORY"?

22 A. YES.

23 Q. AND CAN YOU TELL US WHAT IT SAYS THERE?

24 A. PAST MEDICAL HISTORY PROCEDURE WAS A TOOTH
25 EXTRACTION.

1 Q. THANK YOU. AND IF WE CAN SCROLL DOWN?

2 DR. SHEPHERD, DO YOU KNOW WHAT THE GAD-7
3 EXAM IS?

4 A. YES.

5 Q. CAN YOU EXPLAIN TO US WHAT THE GAD-7 IS?

6 A. YES. THE GAD-7 IS AN OBJECTIVE ASSESSMENT THAT
7 WE UTILIZE TO EXAMINE ANXIETY. SO IF A PERSON PRESENTS
8 TO OUR OFFICE FOR AN ISSUE OF ANXIETY, THESE ARE THE
9 OBJECTIVE ASSESSMENTS THAT WE PUT IN PLACE TO
10 SUBSTANTIATE THE DIAGNOSIS.

11 Q. OKAY. THANK YOU, DR. SHEPHERD.

12 DR. KITCHENS: YOUR HONOR, AT THIS TIME I
13 WOULD LIKE TO ENTER INTO THE RECORD PX 46 -- 45. 46.

14 MS. MEW: NO OBJECTION.

15 THE COURT: PX 46 IS ADMITTED.

16 (PLAINTIFF EXHIBIT 46 IS ADMITTED INTO
17 EVIDENCE.)

18 DR. KITCHENS: ALL RIGHT. THANK YOU.

19 BY DR. KITCHENS:

20 Q. DR. SHEPHERD, BY LOOKING AT THE MEDICAL RECORDS
21 THAT YOU HAVE THAT WAS PROVIDED TO YOU AND THAT WAS
22 GIVEN TO THE -- TO NBME FOR THOSE ACCOMMODATIONS, IN
23 YOUR PROFESSIONAL OPINION, BASED ON YOUR EXPERIENCE, IS
24 IT NECESSARY FOR ADHD TO BE DIAGNOSED AS ADOLESCENCE?

25 A. REPEAT THE QUESTION ONE MORE TIME.

1 Q. YES. IS IT NECESSARY FOR ADHD TO BE DIAGNOSED
2 DURING CHILDHOOD?

3 A. NO, IT'S NOT NECESSARY.

4 Q. OKAY. AND CAN YOU EXPLAIN WHY THAT IS, IN YOUR
5 PROFESSIONAL EXPERIENCE -- PROFESSIONAL OPINION, I'M
6 SORRY?

7 A. IF A PERSON -- I HAVE HAD SITUATIONS WHERE
8 ADULTS HAVE COME IN AND ACTUALLY THE MOTHER OF -- A
9 PARENT MAY HAVE TRIED TO -- THE MOTHER OR FATHER MAY
10 HAVE TRIED TO -- OR A TEACHER RECOGNIZES THAT THE CHILD
11 HAS SOME ISSUES WITH INATTENTION BUT THE PARENT DID NOT
12 -- IS NOT INTERESTED IN SERVICES OR MEDICATION AND THEN
13 THAT PERSON CONTINUED ONTO ADULTHOOD AND RECOGNIZES THAT
14 HE OR SHE STILL HAS PROBLEMS WITH INATTENTION AND THEN
15 THEY WOULD COME TO MY OFFICE, OR ANY PSYCHIATRIC OFFICE,
16 TO RECEIVE CARE BASED OFF OF KNOWING THAT THEY HAVE HAD
17 ISSUES FOR THIS LONG.

18 SO IF A PERSON RECOGNIZES THAT HELP IS
19 NEEDED, THEN THAT'S WHEN HOPEFULLY HELP WOULD BE
20 PROVIDED FOR THEM. NOTHING IS NECESSARY THAT HAS TO BE
21 DIAGNOSED AT ADOLESCENCE. THERE'S NOTHING SAYS THAT.

22 Q. THANK YOU FOR THAT. NOW, YOU TALKED EARLIER
23 ABOUT ANXIETY AND ADHD.

24 IS THERE A POSSIBILITY THAT A SEPARATE
25 DIAGNOSIS OF ANXIETY CAN WORSEN OR INTENSIFY A PATIENT'S

1 SYMPTOMS OF ADHD?

2 A. ABSOLUTELY.

3 Q. CAN YOU ELABORATE MORE ON THAT?

4 A. SO I HAVE SEVERAL PATIENTS WHO HAVE BOTH ADHD
5 AND ANXIETY. BOTH CAN LIVE IN A PERSON CONCURRENTLY,
6 AND SO IF A PERSON HAS ANXIETY, THEN THEY ARE GOING TO
7 BE MORE, OF COURSE, NERVOUS. YOU KNOW, THAT'S WHAT
8 ANXIETY IS SORT OF, BUT THAT CAUSES THEM NOT TO BE ABLE
9 TO PAY ATTENTION. THEY CAN'T SIT STILL. THEY CAN'T
10 FOCUS, I MENTIONED THAT, AND THEN THEY BECOME IMPULSIVE.

11 AND SO WE HAVE SEEN AN UP RISE, IF YOU
12 CAN BELIEVE IT OR NOT, DURING THE PANDEMIC WHERE ANXIETY
13 IS THE NUMBER ONE MENTAL HEALTH DISORDER IN THIS
14 COUNTRY. AND THAT IS ACROSS ALL AGES, CHILDREN,
15 ADOLESCENTS, AND ADULTS, AND WE SEE IT NOW WHERE THOSE
16 WHO HAVE ADHD ACTUALLY ARE EVEN WORSE NOW BECAUSE
17 ANXIETY DOES NOT ALLOW FOR HIM OR HER TO BE ABLE TO --
18 AND WE HAVE SEEN IT WORSE IN ADULTS NOW.

19 IT'S ONE OF THE MAJOR REASONS WHY
20 ADDERALL HAS A SHORTAGE RIGHT NOW, AND YOU ALL MAY BE
21 AWARE OF THAT. IT'S NOT THE FACT THAT THE CHILDREN ARE
22 TAKING MEDICATIONS, BUT THE ADULTS ARE TAKING THE
23 MEDICATIONS. I HAVE BEEN ON WEBINARS NOW AND
24 UNFORTUNATELY IT'S BECAUSE MANY OF THOSE ADULTS DON'T
25 WANT TO ADMIT THAT THEY HAVE ANXIETY DISORDERS. SO

1 ANXIETY WILL DEFINITELY WORSEN ADHD SYMPTOMS.

2 Q. IS ANXIETY, DR. SHEPHERD, CLASSIFIED AS A MENTAL
3 IMPAIRMENT?

4 A. YES.

5 Q. OKAY.

6 A. IT'S THE MOST COMMON MENTAL HEALTH DISORDER IN
7 THIS COUNTRY.

8 Q. THANK YOU.

9 DR. SHEPHERD, I WOULD LIKE TO PULL UP P
10 -- EXHIBIT PX 30?

11 DR. SHEPHERD, DO YOU SEE THE DOCUMENT IN
12 FRONT OF YOU HERE?

13 A. YES, SIR.

14 Q. AND CAN YOU EXPLAIN WHAT THIS DOCUMENT IS?

15 A. PEACE OF MIND COUNSELING, IT IS A REPORT OF AN
16 ATTENTION DEFICIT-HYPERACTIVITY DISORDER EVALUATION.

17 Q. AND CAN WE SCROLL DOWN, PLEASE?

18 CAN YOU SEE THE -- DO YOU SEE WHERE IT
19 SAYS, "ASSESSMENT PROCEDURES"?

20 A. YES.

21 Q. CAN YOU READ THOSE ALL FOR US, PLEASE, FOR THE
22 RECORD?

23 A. "CLINICAL INTERVIEW, RECORD INTERVIEW,
24 BEHAVIORAL OBSERVATIONS." THEN THE ACHENBACH SYSTEM OF
25 EMPIRICALLY BASED ASSESSMENT, WHICH IS A SELF REPORT,

1 AND THE ACHENBACH SYSTEM OF EMPIRICALLY BASED ASSESSMENT
2 SPOUSE REPORT, AND ACHENBACH SYSTEM OF EMPIRICALLY BASED
3 ASSESSMENT MOTHER'S REPORT.

4 AND THEN THEN THE MOXO TO DISTRACTED
5 CONTINUOUS PERFORMANCE TEST.

6 Q. THANK YOU. AND CAN WE SCROLL DOWN, PLEASE?

7 STOP THERE PLEASE. SCROLL UP.

8 SCROLL DOWN, PLEASE?

9 DO YOU SEE WHERE IT SAYS, "CURRENT
10 MEDICATIONS"?

11 A. YES, SIR.

12 Q. CAN YOU READ OFF FOR US?

13 A. PROPRANOLOL, NO DOSAGE THERE, AND THEN ADDERALL,
14 20 MILLIGRAMS, TWICE PER DAY.

15 Q. OKAY. CAN YOU SCROLL DOWN? KEEP GOING. YES,
16 KEEP GOING. KEEP GOING, PLEASE.

17 SO DR. SHEPHERD, WHAT -- AS GOING THROUGH
18 THAT DOCUMENT THERE, WHAT WAS HAPPENING, AS YOU SAID
19 BEFORE, IT LISTED OUT THOSE DIFFERENT ASSESSMENTS THAT
20 WAS BEING CONDUCTED. AND DO YOU SEE -- AND WITH THE
21 RESULTS OF THOSE, THIS IS WHAT WE ARE AT NOW, OKAY, FOR
22 REFERENCE.

23 DO YOU SEE WHERE IT SAYS, "DIAGNOSTIC
24 IMPRESSIONS"?

25 A. YES.

1 Q. CAN YOU TELL US WHAT IT SAYS THERE?

2 A. "ATTENTION DEFICIT-HYPERACTIVITY DISORDER AND
3 COMBINED PRESENTATION."

4 Q. AND CAN YOU CONTINUE TO READ THAT, UNDER
5 "RECOMMENDATIONS FOR CARE"?

6 A. RECOMMENDATIONS FOR CARE, NUMBER ONE, "IT IS
7 RECOMMENDED THAT MARKCUS CONTINUE TO PARTICIPATE IN
8 MEDICATION MANAGEMENT AND/OR THERAPY TO PROVIDE SUPPORT
9 REGARDING HIS CURRENT SYMPTOMS OF ADHD."

10 NUMBER TWO, "DR. KITCHENS IS RECOMMENDED
11 TO SEEK ACCOMMODATIONS WHEN SEEKING TESTS, SUCH AS BOARD
12 EXAMS. SOME RECOMMENDATIONS OR POSSIBLE ACCOMMODATIONS
13 INCLUDE BUT ARE NOT LIMITED TO: A, THE ALLOWANCE OF
14 EXTRA TIME FOR TEST COMPLETION, DOUBLE TIME WOULD BE
15 RECOMMENDED; B, THE ALLOWANCE OF EXTRA THREATS TO BE
16 MOVED DURING TESTING; C, THE ABILITY TO WEAR NOISE
17 CANCELING HEADPHONES OR EARPLUGS TO DECREASE THE AUDIO
18 DISTRACTIONS IN THE EXAM ROOM; D, THE OPTION TO BREAK
19 THE TEST INTO SMALLER TIME PERIODS OVER MULTIPLE DAYS."

20 "AND THE OPTION" -- DO YOU WANT ME TO
21 CONTINUE?

22 Q. YES, PLEASE?

23 A. "IT IS RECOMMENDED DR. KITCHENS ENGAGE IN
24 REGULAR PHYSICAL AND MENTAL SELF CARE ACTIVITIES THAT
25 BRING HIM ENJOYMENT, ENSURING CONSISTENT SCHEDULES

1 INCLUDING REGULAR TIMES TO GO TO BED AND WAKE, ENSURING
2 PROPER DAILY WATER INTAKE AND NUTRITION, AND ENGAGING IN
3 REGULAR SOCIAL ACTIVITIES CAN PROVIDE SIGNIFICANT
4 BENEFITS TO MENTAL HEALTH."

5 NUMBER FOUR, YOU MAY HAVE TO SCROLL DOWN
6 JUST A LITTLE BIT SO I CAN READ ALL OF THAT.

7 THERE WE GO.

8 NUMBER FOUR, "MARKCUS IS ENCOURAGED TO
9 SEEK INFORMATION RELATED TO MANAGING ADHD SYMPTOMS FROM
10 REPUTABLE SOURCES SUCH AS RELIABLE PODCASTS, CHADD,
11 ATTITUDE MAGAZINE, ET CETERA, AND BOOKS, TAKING CHARGE
12 OF ADULT ADHD, BY RUSSELL BARKLEY."

13 Q. AND YOU CAN STOP THERE, DR. SHEPHERD.

14 BASED ON REVIEWING THIS DOCUMENT, AND ON
15 YOUR EXPERIENCE, ARE THERE ANY SPECIFIC REASONS THAT
16 RISE THAT DOUBTS THE VALIDITY OF THIS EVALUATION?

17 A. NO. IT'S VALID.

18 Q. THANK YOU.

19 DR. KITCHENS: AT THIS TIME, YOUR HONOR I
20 WOULD LIKE TO PUT INTO THE RECORD EXHIBIT PX 30?

21 MS. MEW: NO OBJECTION, YOUR HONOR.

22 THE COURT: EXHIBIT 30 ADMITTED.

23 (PLAINTIFF EXHIBIT 30 IS ADMITTED INTO
24 EVIDENCE.)

25 BY DR. KITCHENS:

1 Q. THANK YOU.

2 SO DR. SHEPHERD, YOU SAID YOU HAVE BEEN
3 PRACTICING PSYCHIATRY FOR HOW MANY YEARS NOW?

4 A. SO I HAVE BEEN FULLY OUT FOR 12 YEARS NOW.

5 I COMPLETED MY MASTERSHIP IN 2011.

6 Q. SO LET ME ASK YOU THIS:

7 WHAT ARE SOME OF THE EXAMPLES THAT YOU
8 WOULD RECOMMEND FOR YOUR PATIENT -- YES, WHAT TYPE OF
9 RECOMMENDATIONS WOULD YOU GIVE FOR ACCOMMODATIONS FOR A
10 PATIENT WITH THE DIAGNOSES OF ADHD AND ANXIETY, WHEN
11 TAKING A HIGH STAKES EXAMINATION, SUCH AS THE U.S.M.L.E.
12 EXAM?

13 A. OH, I BELIEVE THAT THE EVALUATION THAT YOU JUST
14 SHOWED AS AN EXHIBIT EXPRESSED MANY OF THE THINGS THAT I
15 SHARE WITH THE SCHOOLS. SO WITH CHILDREN, I WILL START
16 THERE AND THEN I WILL MOVE TO ADULTS, WITH CHILDREN WE
17 LOOK TO HAVE EDUCATIONAL SUPPORTS. THAT IS WHERE
18 INDIVIDUALS EDUCATIONAL PLANS COME INTO PLAY, SO THAT
19 OUR CHILDREN CAN BE SUCCESSFUL AND MEETING THE VARIOUS
20 CRITERIA AND GOALS THAT THE TEACHERS HAVE SET FOR THEM.

21 AND THEN FOR ADULTS, IT IS OF UPMOST
22 IMPORTANCE THAT -- THAT A PERSON WHO HAS THESE
23 PARTICULAR DISORDERS, AGAIN, DISORDER MEANING UNABLE TO
24 FUNCTION PROPERLY, FUNCTIONAL IMPAIRMENTS, THAT THERE
25 ARE ACCOMMODATIONS THAT ARE PROVIDED FOR THOSE PERSONS,

1 WHETHER IT BE FOR EXTRA TIME WITH THE TESTS, AS ONE WHO
2 RECOMMENDED DOUBLE TIME, A SAFE SPACE WHERE NO ONE CAN
3 INTERRUPT THEM, AND THEN BREAKING UP THE TEST OVER
4 MULTIPLE DAYS OR ALLOWING LONGER BREAKS TO MAKE SURE
5 THAT THAT PERSON IS ABLE TO FUNCTION AND FINISH THE TEST
6 AT THE BEST OF THEIR ABILITY.

7 Q. AND WHEN THIS -- AND THANK YOU FOR THAT, AND
8 MOVING ONTO MY NEXT QUESTION FOR YOU WOULD BE:

9 WHO DO YOU, IN YOUR PROFESSIONAL
10 EXPERIENCE AND OPINION, WHO WOULD POSSESS OR WHO WOULD
11 POSE A GREATER UNDERSTANDING OF A PATIENT'S CONDITION
12 BASED OFF OF DOCUMENTATION, AN OUTSIDE SOURCE OR THE
13 TREATING PHYSICIAN?

14 A. THE TREATING PHYSICIAN.

15 Q. AND WHY IS THAT?

16 A. BECAUSE THAT PERSON KNOWS THAT INDIVIDUAL.

17 Q. THANK YOU FOR THAT. NOW I WANT TO KIND OF
18 CHANGE GEARS A LITTLE BIT HERE.

19 SO ARE YOU FAMILIAR WITH THE ADA -- ARE
20 YOU FAMILIAR WITH THE ADA RULE?

21 A. WHICH IS -- ADA STANDING FOR THE AMERICANS WITH
22 DISABILITIES ACT?

23 Q. YES.

24 A. YES, I AM FAMILIAR.

25 Q. OKAY. AND I WOULD LIKE TO ASK YOU:

1 HOW WOULD YOU INTERPRET THE APPLICATION
2 OF THE ADA'S RULES OF REQUIRING LESS DOCUMENTATION FOR A
3 PERSON TO BE DISABLED?

4 A. WELL, AND THAT'S A VERY INTERESTING QUESTION
5 BECAUSE WHAT WE FIND IN MY REALM, IF I CAN SPEAK FROM
6 THAT, IS THAT WE SEE PERSONS WHO ARE FUNCTIONALLY
7 IMPAIRED DUE TO MENTAL HEALTH DISORDERS.

8 NOW, UNFORTUNATELY, MANY OF THOSE PERSONS
9 ARE VICTIMS. THEY ARE NOT THE ONES WHO ARE ACTUALLY
10 CAUSING THE ISSUE. THEY ARE VICTIMS AND SO, ONE OF THE
11 REASONS WHY THAT PARTICULAR RULE, I BELIEVE, IS IN PLACE
12 IS SO THAT THOSE PERSONS CAN CUT THROUGH THE RED TAPE TO
13 BE ABLE TO GET THE SERVICES THAT ARE NEEDED.

14 THERE ARE WAY TOO MANY BARRIERS, EVEN TO
15 THIS DAY, WHERE PEOPLE WHO ARE MENTALLY CHALLENGED ARE
16 NOT ABLE TO GET THE RESOURCES THAT THEY NEED. I AM A
17 STRONG ADVOCATE IN MAKING SURE THAT THESE BARRIERS ARE
18 TORN DOWN. WHETHER IT BE OF RACE, RELIGION, OR
19 DISABILITY, THERE SHOULD BE NO REASON WHY THESE BARRIERS
20 ARE PUT IN PLACE WHEN THEY ARE THE VICTIMS AND MANY
21 TIMES HAVE NO REASON -- OR, NO CHOICE IN THE DISABILITY
22 THAT THAT THEY ACQUIRED.

23 Q. THANK YOU.

24 AND DR. SHEPHERD, WHAT DEMOGRAPHIC OF
25 PATIENTS DO YOU -- DO YOU TYPICALLY TREAT IN YOUR

1 CURRENT CAPACITY?

2 A. ALL.

3 Q. YES.

4 A. PROBABLY MOST -- MORE PATIENTS ARE OF AFRICAN
5 DECENT, OR AFRICAN AMERICANS, BUT BECAUSE MENTAL ILLNESS
6 HAS NO COLOR, I HAVE PEOPLE COMING FROM ALL -- I HAVE
7 DELAWARE, VIRGINIA, WHO COME TO OUR OFFICE, AND ALL
8 ETHNICITIES.

9 Q. LET ME ASK YOU, AND GOING ALONG WITH THAT I KNOW
10 YOU TALKED ABOUT HAVING A LOT OF AFRICAN AMERICANS THAT
11 -- IN YOUR PARTICULAR DEMOGRAPHIC IN YOUR CURRENT
12 POSITION:

13 WHAT ARE YOUR OBSERVATIONS AND
14 PROFESSIONAL INSIGHT REGARDING THE UTILIZATION OF MENTAL
15 HEALTH TREATMENT BY AFRICAN AMERICANS COMPARED TO
16 INDIVIDUALS OF OTHER RACES SUCH AS THEIR WHITE COUNTER
17 PARTS?

18 A. YEAH, YOU KNOW, THAT'S SUCH AN INTERESTING STUDY
19 BECAUSE THAT IS ONE OF MY STRENGTHS IN ADVOCACY, WORKING
20 WITH THE BLACK MENTAL HEALTH ALLIANCE, WHICH I AM THE
21 BOARD PRESIDENT OF, I SEE FIRSTHAND WHERE THE STIGMA OF
22 MENTAL HEALTH INVADES WITHIN THE BLACK COMMUNITY.

23 WHAT IS VERY INTERESTING, AND I HAVE
24 NOTED, IS THAT THE STIGMA IS REDUCING BUT THE ISSUE, THE
25 TRUE ISSUE IN THE BLACK COMMUNITIES IS THAT THERE IS A

1 DESERT, THERE IS DISCONNECT OF THOSE PERSONS WHO ARE
2 ABLE TO SEEK OUT THE MENTAL HEALTH SERVICES.

3 SO, EVEN THOUGH WE ARE DOING A BETTER JOB
4 OF REDUCING THE STIGMA, THE PEOPLE CAN'T GET TO THE
5 SERVICES BECAUSE THERE ARE NO SERVICES IN THOSE BLACK
6 COMMUNITIES FOR THEM TO GO OUT TO GET THE MENTAL HEALTH
7 RESOURCES OR SERVICES THAT ARE NEEDED.

8 SO STIGMA IS DEFINITELY STILL THERE, BUT
9 IN OUR COUNTRY, ONE OF THE MAJOR ISSUES THAT WE HAVE IS
10 HEALTH CARE DISPARITIES AND THE INABILITY TO GET THE
11 RESOURCES TO THE PEOPLE.

12 Q. THANK YOU FOR THAT.

13 AND DO YOU -- BASED ON YOUR YEARS OF
14 EXPERIENCE, DO YOU FIND IT COMMON FOR AFRICAN AMERICANS,
15 PARTICULARLY WHEN IT COMES TO AFRICAN AMERICAN CHILDREN,
16 TO DECLINE MENTAL HEALTH TREATMENT RECOMMENDATIONS?

17 A. YES.

18 Q. AND WHY IS THAT?

19 A. FEAR. NUMBER ONE IS FEAR.

20 YOU KNOW, I MENTIONED EARLIER THAT WE
21 HAVE AN HOUR FOR ASSESSMENT. AND THEN I WILL SPEND THAT
22 HOUR AND THEN I WILL LITERALLY HAVE TO SPEND ANOTHER
23 MINUTES IN REDUCING THAT FEAR, AND ITS VERY INTERESTING.

24 SO WHEN PEOPLE LOOK AT ME, THEY MAY SEE,
25 YOU KNOW, IF IT'S A BLACK PERSON THEY MAY SEE, OH, MAYBE

1 HE IDENTIFIES WITH ME. IT HAS NO COLOR HERE. PEOPLE
2 ARE FEARFUL BECAUSE OF WHAT HAS HAPPENED IN OUR COUNTRY
3 IN REGARDS TO STRUCTURAL AND INSTITUTIONAL RACISM, WHICH
4 I HAVE EXPERIENCED MYSELF IN THE MEDICAL FIELD.

5 AND SO WHEN IT HAPPENS THAT A PERSON IS
6 NOW SUGGESTING MEDICATION, ESPECIALLY HERE IN BALTIMORE,
7 BECAUSE BALTIMORE IS VERY UNIQUE WITH JOHNS HOPKINS, AND
8 SO PEOPLE GROWN UP HERE AND THEY HAVE SEEN IT AND SEEN
9 WHERE VARIOUS INSTITUTIONS HAVE PURPOSELY GONE AFTER
10 OTHER BLACKS AND UTILIZING THE VERY EXPERIMENTS HERE --
11 I WILL NOT GET INTO ALL THAT HISTORY, BUT IT'S ONE OF
12 THE MAJOR ISSUES I DEAL WITH HERE IN MARYLAND AND
13 BALTIMORE, BECAUSE PEOPLE HAVE JUST A LACK OF TRUST AND
14 SO I HAVE TO DEAL WITH THAT.

15 SO THE NUMBER ONE ISSUE IS FEAR. IF YOU
16 CAN GET PAST THE FEAR, THEN PEOPLE WILL GO ALONG WITH
17 THE RECOMMENDATIONS.

18 Q. THANK YOU FOR THAT.

19 AND LET'S -- I WANT TO CHANGE GEARS A
20 LITTLE BIT HERE, AND ASK ABOUT YOUR -- TALK A LITTLE BIT
21 MORE ABOUT SOME MORE PERSONAL EXPERIENCES AS WELL, FOR
22 UNDERSTANDING.

23 COULD YOU SHARE YOUR ACADEMIC PERFORMANCE
24 RELATED TO YOUR CLASSMATES WHEN YOU WERE IN MEDICAL
25 SCHOOL?

1 MS. MEW: YOUR HONOR, I OBJECT TO THIS ON
2 THE GROUNDS OF RELEVANCE.

3 THE COURT: YES, IT'S BASED ON WHAT WE
4 HEARD YESTERDAY. I THINK IT WILL BE RELATIVELY QUICK,
5 SO I AM GOING TO OVERRULE THAT.

6 DR. KITCHENS, GO AHEAD.

7 DR. KITCHENS: THANK YOU, YOUR HONOR.

8 BY DR. KITCHENS:

9 Q. YES, DR. SHEPHERD, I WILL ASK YOU AGAIN.

10 COULD YOU SHARE WITH THE COURT TODAY OF
11 YOUR -- YOUR ACADEMIC PERFORMANCE WHILE YOU WERE IN
12 MEDICAL SCHOOL?

13 A. YES. I SUCCESSFULLY PASSED MEDICAL SCHOOL AND I
14 I CAN'T REMEMBER MY EXACT PERCENTILE, BUT I WAS NOT AT
15 THE BACK OF THE CLASS. I WAS NOT AT THE HEAD OF THE
16 CLASS, BUT I DID WELL.

17 Q. GOOD. GOOD.

18 AND DID YOU FACE ANY CHALLENGES WHILE YOU
19 WERE -- ANY -- DURING YOUR TIME IN SCHOOL, DID YOU
20 ENCOUNTER ANY CHALLENGES OR DIFFICULTIES WITH YOUR CLASS
21 WORK?

22 A. YES. ABSOLUTELY I DID.

23 MEDICAL SCHOOL IS VERY CHALLENGING, VERY
24 HARD, VERY DEMANDING. I HAD TO REPEAT A COUPLE OF MY
25 SURGICAL EXAMS. ACTUALLY HAD TO REDO THE WHOLE SURGICAL

1 ROTATION AS AN M3, BECAUSE I FAILED THE TEST TWICE. AND
2 IT WAS A LITTLE BIT EMBARRASSING BECAUSE MY CLASS BEHIND
3 ME SAW ME TAKING THE COURSE WITH THEM. I STILL
4 GRADUATED ON TIME, BUT IT JUST SPOKE TO MY FORTITUDE AND
5 INTEGRITY TO BE ABLE TO GO AHEAD AND PASS THAT THIRD
6 TIME AROUND.

7 Q. THANK YOU. AND AT THIS TIME CAN WE BRING UP
8 EXHIBIT PX 86, PLEASE? I THINK IT'S ONLY ONE PAGE
9 THERE.

10 DR. SHEPHERD, AND FOR THE RECORD, I AM
11 GOING TO GIVE YOU A LITTLE INSIGHT HERE. THESE ARE
12 RECORDS THAT HAVE BEEN PRODUCED SINCE 2019, THROUGH THE
13 2020 RESIDENCY PROGRAMS, THAT ARE CONDUCTED -- GENERAL
14 PUBLIC KNOWLEDGE EVERY YEAR.

15 AS YOU CAN SEE IN -- DO YOU SEE WHERE IT
16 SAYS, "FAMILY MEDICINE," THERE, IN 2019 THROUGH 2020?

17 A. YES.

18 Q. CAN YOU SEE WHERE IT SAYS, "AFRICAN AMERICANS"?

19 A. YES.

20 Q. AND FOR PLACEMENT, CAN YOU SEE THE PERCENTAGE OF
21 THAT PARTICULAR PEOPLE THAT MATCHED INTO FAMILY MEDICINE
22 THAT YEAR?

23 MS. MEW: YOUR HONOR, I OBJECT TO THIS
24 LINE OF QUESTIONING IN RELATED TO THIS DOCUMENT. IT HAS
25 NOT BEEN AUTHENTICATED. THERE IS NO FOUNDATION. IT

1 LOOKS LIKE SOME KIND OF A SUMMARY, BUT I DON'T KNOW WHAT
2 THE SOURCE DATA IS. THIS IS A DOCUMENT THAT WAS FIRST
3 PROVIDED TO ME ON SATURDAY MORNING AND THERE IS NO
4 EXPLANATION OF WHAT THIS DATA IS AND WHERE IT CAME FROM.

5 THE COURT: FAIR ENOUGH, BUT PERHAPS WE
6 WILL LEARN, SO I AM GOING TO HOLD THAT OBJECTION FOR
7 NOW.

8 BY DR. KITCHENS:

9 Q. SO DR. SHEPHERD, CONTINUING ON HERE WITH THIS
10 AAMC'S -- THIS DATA FROM THE AAMC'S WEBSITE ITSELF.

11 SO IN 2019 TO 2020, YOU SEE THAT THERE
12 WAS -- YOU SAID THAT THERE WAS 9.3 PERCENT; CORRECT?

13 A. YES, IT SAYS 9.3.

14 Q. YES. CAN YOU SEE, AND IF WE CAN SCROLL OVER AND
15 WE'LL SKIP TO 2020, AND GO TO RIGHT TOWARDS 2021 THROUGH
16 2022 MATCH PROGRAM FOR FAMILY MEDICINE.

17 DO YOU SEE WHERE IT SAYS "AFRICAN
18 AMERICANS"?

19 A. YES.

20 Q. AND WHAT IS THE PERCENTAGE OF AFRICAN AMERICANS
21 THAT MATCHED INTO FAMILY MEDICINE RESIDENCY PROGRAMS
22 BETWEEN THE YEAR OF 2021 AND 2022?

23 A. 9.90 PERCENT.

24 Q. OKAY. AND IF WE CAN SCROLL DOWN, RIGHT BELOW
25 IT, IT SAYS, "INTERNAL MEDICINE."

1 CAN YOU SEE FOR INTERNAL MEDICINE, 2021
2 THROUGH 2022, COMPARISON OF RESIDENCY PROGRAMS, CAN YOU
3 SEE WHERE IT SAYS SAYS "AFRICAN AMERICANS"?

4 A. YES.

5 Q. AND WHAT IS THAT PERCENTAGE?

6 A. 5.10 PERCENT.

7 Q. AND THEN ALSO RIGHT BELOW IT WE SEE "PLASTIC
8 SURGERY."

9 A. YES.

10 Q. DO YOU SEE, FOR 2021 THROUGH 2022, COMPARISON OF
11 RESIDENCY PROGRAMS.

12 DO YOU SEE AFRICAN AMERICANS?

13 A. MM-HMM. YES, 3.10 PERCENT.

14 Q. AND HOW MANY RESIDENTS WERE -- THAT 3.1 PERCENT
15 IS A CORRELATION OF HOW MANY RESIDENTS?

16 A. FIVE.

17 Q. FIVE RESIDENTS.

18 SO I WOULD LIKE TO ASK YOU NOW -- AND
19 AGAIN, THIS IS A DOCUMENT THAT IS FOR THE ENTIRE UNITED
20 STATES, PUT IT IN YOUR PROFESSIONAL OPINION OF THIS
21 DOCUMENT, WHAT DO YOU GATHER FROM THIS DATA, GIVEN TO --
22 SHOWN IN FRONT OF YOU?

23 MS. MEW: OBJECTION, YOUR HONOR. AGAIN,
24 THERE IS NO FOUNDATION FOR THIS. HE SHOULD NOT BE ABLE
25 TO USE A SUMMARY DOCUMENT UNDER RULE 1006. IF THERE IS

1 A SUMMARY, WE ARE SUPPOSED TO BE PROVIDED WITH THE
2 ORIGINALS AND AT A REASONABLE TIME.

3 THIS IS ALSO IRRELEVANT. YOU DON'T KNOW,
4 FOR EXAMPLE, RELATIVE TO HOW MANY OTHERS ARE IN THE
5 PROCESS -- JUST THERE IS NO -- THERE IS NO CONNECTION
6 AND DR. SHEPHERD IS NOT THE AUTHOR OR THE SOURCE OF THIS
7 DATA TO BE SPEAKING TO IT WITH ALL OF THESE OTHER
8 PROBLEMS LEADING UP TO IT.

9 THE COURT: SURE. I MEAN, MY --
10 OBJECTION IS WELL TAKEN. MY SUPPOSITION THAT IS THE
11 EXACT NUMBERS ARE NOT REALLY THE POINT HERE, BUT I'M NOT
12 ENTIRELY SURE BECAUSE I WANT TO HEAR THE REST OF THE
13 QUESTIONING. BUT SO WHY DON'T WE -- DR. KITCHENS, WHY
14 DON'T YOU FINISH WITH THIS LINE OF QUESTIONING BEFORE I
15 RULE ON THE DOCUMENT.

16 DR. KITCHENS: YES, SIR.

17 BY DR. KITCHENS:

18 Q. SO ON THAT -- SO -- AND ALSO THIS IS, AS WE CAN
19 SEE HERE -- SO AGAIN, DR. SHEPHERD, BY REVIEWING THE
20 DATA THAT YOU JUST SAW, GIVEN BY THE AAMC, WHAT -- IN
21 YOUR PROFESSIONAL OPINION, WHAT DO YOU GATHER FROM THIS
22 DATA?

23 A. FROM MY PROFESSIONAL OPINION, I GATHER THAT -- A
24 COUPLE OF THINGS. NUMBER ONE, IT'S A SAD TESTAMENT THAT
25 THE POPULATION OF BLACKS IN AMERICA, ABOUT 13, 14,

1 SOMETIMES AS HIGH AS 15 PERCENT, BUT THERE IS ONLY FIVE
2 RESIDENTS WHO ARE BLACK WHO MATCH INTO PLASTIC SURGERY.

3 SO IT TELLS ME THAT OUR EFFORTS IN
4 DIVERSIFYING MEDICINE IS, NUMBER TWO, ARE NOT GOING
5 WELL.

6 AND THEN IT ALSO TELLS ME THAT THE
7 BARRIERS OF -- THAT WE HOPE TO HAVE BROUGHT DOWN TO GET
8 MORE PEOPLE INTO VARIOUS SPECIALTIES MUST STILL BE UP,
9 THEY MUST STILL BE PRESENT.

10 Q. THANK YOU, DR. SHEPHERD FOR THAT.

11 DR. KITCHENS: AND, YOUR HONOR, I WOULD
12 LIKE TO ENTER THIS DOCUMENT INTO THE RECORD AS PX 86?

13 MS. MEW: I OBJECT, FOR THE REASONS
14 PREVIOUSLY STATED, YOUR HONOR.

15 THE COURT: DR. KITCHENS, I DON'T THINK I
16 CAN ADMIT THIS DOCUMENT, AND THE REASON IS I CAN TAKE A
17 HAZARD A GUESS AS TO WHAT IT IS, BUT I DON'T KNOW ENOUGH
18 ABOUT IT TO ADMIT IT. I AM NOT SURE IT'S A GOOD USE OF
19 YOUR TIME TO CONTINUE TO FIGHT ON THAT, ONLY BECAUSE I
20 THINK THE TESTIMONIAL POINTS THAT DR. SHEPHERD MADE, I
21 THINK IS WHAT YOU WERE GOING FOR REGARDLESS OF THE EXACT
22 CONTENTS OF THE DOCUMENT.

23 I COULD BE WRONG ABOUT THAT, SO I AM
24 GOING TO SUSTAIN THE OBJECTION AND NOT ADMIT THAT
25 EXHIBIT, EXHIBIT -- OH, I LOST THE NUMBER.

1 WHAT WAS THE EXHIBIT NUMBER?

2 DR. KITCHENS: PX 86.

3 THE COURT: OKAY. I AM NOT GOING TO
4 ADMIT PX 86 FOR NOW. THANK YOU.

5 DR. KITCHENS: OKAY. THANK YOU, YOUR
6 HONOR.

7 BY DR. KITCHENS:

8 Q. DR. SHEPHERD, DID YOU PARTICIPATE IN THE
9 U.S.M.L.E. STEP EXAMS AS PART OF YOUR MEDICAL EDUCATION?

10 A. YES.

11 Q. AND -- YES, OKAY. THANK YOU.

12 AND ROUGHLY, WHAT WERE YOUR SCORES LIKE
13 WHEN YOU TOOK THIS EXAM?

14 MS. MEW: YOUR HONOR, OBJECTION. I
15 OBJECT TO THIS LINE OF QUESTIONING. IT IS NOT RELEVANT
16 AND NOT RELATED TO HIS EXPERTISE.

17 DR. KITCHENS: IT IS.

18 THE COURT: I AM GOING TO OVERRULE JUST
19 FOR THE SAME REASONS WE DISCUSSED YESTERDAY AND A
20 SIMILAR SITUATION.

21 SO GO AHEAD, DR. KITCHENS.

22 DR. KITCHENS: THANK YOU, YOUR HONOR.

23 BY DR. KITCHENS:

24 Q. SO DR. SHEPHERD, WHAT WERE YOUR -- WHAT WERE
25 YOUR SCORES LIKE WHEN TAKING -- YOUR SCORE RESULTS LIKE

1 WHEN TAKING THE U.S.M.L.E. STEP EXAMS?

2 A. I PASSED ALL OF MY -- I CAN'T REMEMBER MY EXACT
3 SCORES BUT I PASSED STEP 1, STEP 2, STEP 3, ON THE FIRST
4 GO ROUND, YES.

5 Q. AND FOR THE RECORD, CAN YOU GIVE US A VARIETY OF
6 -- FOR A RECOLLECTION OF THE PERCENTILE THAT YOU
7 PERFORMED IN?

8 Q. HIGH, LOW, MEDIUM?

9 A. I WOULD SAY MEDIUM, YEAH -- MEDIUM.
10 THE FIRST TIME AROUND WAS MEDIUM,
11 PROBABLY LOW TO MEDIUM. MY TEST ANXIETY GOT THE BEST OF
12 ME. THEN I LEARNED HOW TO BE ABLE TO TAKE THOSE EXAMS
13 AND I BEGAN TO SCORE MUCH HIGHER. SO I WOULD SAY, FOR
14 STEP 2 AND STEP 3, MEDIUM TO HIGHER LEVEL.

15 Q. AND DR. SHEPHERD, DO YOU -- HAVE YOU EVER
16 PRACTICED IN ACADEMIA?

17 A. I HAVE I PRACTICED IN ACADEMIA.

18 Q. YES, SORRY.

19 HAVE YOU EVER TAUGHT IN ACADEMIA?

20 A. I DO -- I DO TEACH. I AM A GUEST LECTURER FOR
21 PROGRAMS HERE AND BACK AT MY ALMA MATER MEDICAL SCHOOL.

22 Q. AND ARE YOU FAMILIAR WITH THE RESIDENCY PROCESS?

23 A. YES.

24 Q. AND WHAT SPECIFIC KNOWLEDGE OR EXPERTISE DO YOU
25 PROPOSE THAT WOULD PROVIDE YOU WITH AN INSIGHT INTO THE

1 FACTORS CONSIDERED BY RESIDENCY PROGRAMS DURING THEIR
2 SELECTION PROCESS?

3 A. SO NUMBER ONE, BECAUSE I AM CONNECTED TO THE
4 VARIOUS INSTITUTIONS THAT ARE HERE IN BALTIMORE AND I
5 TEACH -- I ACTUALLY -- I TEACH CAREER DEVELOPMENT AND
6 PLANNING AT TWO OF THE INSTITUTIONS, UNIVERSITY OF
7 MARYLAND, AND ALSO CHILDREN'S NATURAL HOSPITAL, WHICH IS
8 IN D.C. I DO THAT EVERY YEAR.

9 I AM ALSO CONNECTED TO THE RESIDENCY
10 DIRECTORS. SO WHEN THE RESIDENCY DIRECTORS ARE LOOKING
11 FOR AN APPOINTMENT OPPORTUNITIES FOR THE RESIDENTS
12 THERE, I AM ONE OF THE FIRST PEOPLE THAT THEY CALL TO
13 ASSIST IN THE THOSE EMPLOYMENT OPPORTUNITIES.

14 I ALSO GO BACK AND I TEACH THE FIRST AND
15 SECOND YEAR MEDICAL STUDENTS AT UNIVERSITY OF ILLINOIS
16 AND I AM ONE OF THE MOST REQUESTED PROFESSORS TO COME
17 BACK AS I TEACH THEM HOW TO BE ABLE TO HAVE HOMEOSTASIS,
18 WHICH MEANS BALANCE, TO BE ABLE TO KNOW HOW TO BE ABLE
19 TO HANDLE YOUR ANXIETY AND OTHER DISORDERS THAT THEY
20 HAVE SO THEY CAN BE ABLE TO BE SUCCESSFUL IN MEDICAL
21 SCHOOL.

22 AND SO MY CONNECTION IS FAR REACHING.
23 AND THEN I ALSO WORK WITH OTHER PROVIDERS WHO ARE NOT
24 JUST LOOKING FOR EMPLOYMENT OPPORTUNITIES, BUT BE ABLE
25 TO CENTER AROUND THOSE PERSONS WHO ARE STRUGGLING IN

1 RESIDENCY, WHICH RESIDENCY IS A VERY DIFFICULT TIME FOR
2 PEOPLE BECAUSE OF THE DEMAND AND HOW MUCH TIME THAT YOU
3 SPEND THERE IN THE HOSPITAL.

4 SO ALL OF THESE THINGS I'M -- I LIVE,
5 LITERALLY ON A DAILY BASIS.

6 Q. THANK YOU.

7 AND SO BY HEARING THIS BACKGROUND OF YOUR
8 EXPERTISE -- OR, YES, YOUR BACKGROUND THERE, ARE YOU
9 FAMILIAR WITH THE FACT THAT CERTAIN RESIDENCY PROGRAMS
10 HAVE A PREFERENCE FOR APPLICANTS WHO HAVE PASSED THE
11 U.S.M.L.E. EXAMS ON THE FIRST ATTEMPT?

12 MS. MEW: YOUR HONOR, I JUST WANT TO
13 LODGE MY OBJECTION AND THEN LET -- DR. KITCHENS CAN GO,
14 BUT THIS LINE OF QUESTIONING IT, AGAIN, OBJECTS 401 TO
15 403, 72 IS NOT RELEVANT AND IT IS ALSO NOT A GOOD FIT
16 FOR ANY EXPERT QUALIFICATIONS THAT WERE PRESENTED.

17 THE COURT: ALL RIGHT. OVERRULED FOR
18 NOW.

19 BY DR. KITCHENS:

20 Q. YES, SIR?

21 A. I AM AWARE.

22 Q. THANK YOU. AND IF WE COULD PLEASE PUT UP
23 EXHIBIT PX 78, PLEASE? THANK YOU.

24 SO, YES, SCROLL DOWN JUST A LITTLE BIT,
25 PLEASE?

1 SO THIS DOCUMENT HERE, DR. SHEPHERD, DO
2 YOU SEE THE DOCUMENT THAT IS ON THE SCREEN HERE, OF THE
3 ENTIRE WEBSITE?

4 A. YES, SIR.

5 Q. AND WHAT DO YOU GATHER FROM THIS -- WHAT TYPE OF
6 DOCUMENT DO YOU SEE HERE?

7 A. IT IS A LETTER STATING OF THE -- THANK YOU FOR
8 OUR INTEREST IN THE RESIDENCY PROGRAM AT THE GRADUATE --
9 THE UNIVERSITY GRADUATE SCHOOL OF MEDICINE, THAT
10 OUTLINES HOW TO PARTICIPATE IN THE APPLICATION PROCESS.

11 Q. SO IS IT SAFE TO -- YES, AND -- SO YES, THAT IS
12 CORRECT. AND WHAT THAT DOCUMENT IS, FOR CLARIFICATION,
13 IS THAT THIS IS A DOCUMENT OF CRITERIA FOR THE
14 UNIVERSITY OF TENNESSEE AT KNOXVILLE'S CRITERIA FOR
15 INTERNAL MEDICINE.

16 IF WE CAN PLEASE SCROLL TO -- SCROLL
17 DOWN, PLEASE. HERE.

18 NOW, DR. SHEPHERD, DO YOU SEE THE
19 STATEMENT STATING "WE REVIEW ALL APPLICATIONS"?

20 A. YES.

21 Q. CAN YOU READ FROM THERE DOWN IN ITS ENTIRETY,
22 PLEASE?

23 A. "WE REVIEW ALL APPLICATIONS SENT TO US IN -- AND
24 IN THE 2021 THROUGH 2022 APPLICATION SEASON, WE RECEIVED
25 ALMOST 2,000 APPLICATIONS FOR OUR 13 POSITIONS IN FIELD

1 THROUGH -- "

2 "OUR REQUIREMENTS ARE, NUMBER ONE, WE DO
3 REQUIRING PASSING THE U.S. MLA/COMPLEX EXAMS ON THE
4 FIRST ATTEMPT, BOTH STEP 1 AND STEP 2, AND ONE YEAR OF
5 PRIOR U.S. TRAINING, WHICH MAY INCLUDE ANY RESEARCH
6 WORK."

7 "NUMBER TWO WE REQUIRE APPLICANTS BE
8 WITHIN FIVE YEARS FOLLOWING GRADUATION FROM MEDICAL
9 SCHOOL."

10 "NUMBER THREE, ALL SCORES AND TESTING
11 MUST BE COMPLETE BEFORE APPLICANT WILL BE CONSIDERED FOR
12 INTERVIEW. WE EXTEND THAT GRADUATION FROM MEDICAL
13 SCHOOL MUST TAKE PLACE BEFORE YOU CAN RECEIVE YOUR ECFMG
14 CERTIFICATES."

15 "NUMBER FOUR, PLEASE KEEP IN MIND THAT
16 THE UNIVERSITY OF TENNESSEE MEDICAL CENTER/KNOXVILLE
17 DOES NOT SPONSOR THE H-1 VISA. WE DO CURRENTLY HAVE
18 INTERNATIONAL MEDICAL GRADUATES IN OUR PROGRAM. ALL ARE
19 -- ALL ARE EITHER CITIZENS OF THE U.S. OR ON A J-1
20 VISA."

21 Q. THANK YOU, DR. SHEPHERD.

22 AND FROM WHAT YOU JUST READ THERE, WHAT
23 WOULD YOU GATHER FROM THAT INFORMATION GIVEN?

24 A. THAT THIS IS A VERY COMPETITIVE PROGRAM, AND
25 THAT THE THEY HAVE SET UP GUIDELINES IN THEIR ESTIMATION

1 AS BEST TO BE ABLE TO WEED OUT PEOPLE SO THAT THEY CAN
2 GET THE BEST OF WHO THEY WOULD WANT FOR THEIR PROGRAM.

3 Q. THANK YOU FOR THAT.

4 AND, YOUR HONOR, AT THIS TIME I WOULD
5 LIKE TO TENDER THIS DOCUMENT INTO THE RECORD AS PX 78?

6 MS. MEW: WE WOULD OBJECT, YOUR HONOR,
7 FOR LACK OF FOUNDATION AND LACK OF RELEVANCE.

8 THE COURT: I AM NOT GOING TO ADMIT PX
9 78, DR. KITCHENS. I AM NOT 100 PERCENT SURE WHAT THAT
10 DOCUMENT IS OR WHERE IT CAME FROM, BUT YOU MAY HAVE
11 GOTTEN WHAT YOU NEEDED FROM THE TESTIMONY, I SUSPECT.

12 DR. KITCHENS: YES, SIR. AND, YOUR
13 HONOR, I THINK FOR CLARIFICATION FOR THE COURT, AND
14 CORRECT ME IF I'M WRONG, ON THAT DOCUMENT, I THINK THAT
15 THERE WAS A CITING ON THE BOTTOM.

16 WOULD THAT COUNT, OR NO?

17 THE COURT: WELL, FROM THE PERSPECTIVE --
18 I AM NOT GOING TO TELL YOU HOW TO TRY YOUR CASE, BUT
19 FROM THE PERSPECTIVE OF FOUNDATION, YOU MAY BE THE BEST
20 WITNESS TO SPEAK FOR, FOR EXAMPLE, WHERE THAT DOCUMENT
21 CAME FROM, BUT I WILL LEAVE THAT UP TO YOU TO FIGURE
22 OUT.

23 DR. KITCHENS: THANK YOU, YOUR HONOR. I
24 WILL MOVE ON.

25 BY DR. KITCHENS:

1 Q. DR. SHEPHERD, HAVE YOU APPLIED FOR LICENSURE, IN
2 THE UNITED STATES OF AMERICA, TO PRACTICE MEDICINE?

3 A. YES.

4 Q. AND WHAT STATE OR STATES HAVE -- ARE YOU -- HAVE
5 YOU APPLIED FOR?

6 A. ILLINOIS, MARYLAND, AND DISTRICT OF COLUMBIA.

7 Q. AND COULD YOU PLEASE PROVIDE A DESCRIPTION TO
8 THE COURT REGARDING THE PROCESS INVOLVED IN APPLYING FOR
9 LICENSURE IN THE U.S.?

10 A. IT'S A VERY INVOLVED PROCESS. I JUST WENT
11 THROUGH IT FOR THE DISTRICT OF COLUMBIA, WHERE YOU MUST
12 SUBMIT AND REQUEST TRANSCRIPTS ALL THE WAY BACK FROM
13 YOUR UNDERGRAD AND MEDICAL SCHOOL.

14 YOU HAVE TO GO THROUGH THE FCVS -- I
15 DON'T THINK I HAVE THOSE INITIALS RIGHT -- THAT PROVIDES
16 THIS INFORMATION. THAT'S WHERE YOU THE U.S.M.L.E.
17 SCORES, AND THOSE TRANSCRIPTS ARE STORED.

18 YOU ALSO HAVE TO GO THROUGH BACKGROUND
19 CHECKS, EXTENSIVE BACKGROUND CHECKS DEPENDING ON WHAT
20 POSITION YOU ARE APPLYING FOR. AND SO IT IS A VERY
21 ENGAGED AND -- ENGAGED AND LONG PROCESS AND COSTLY
22 PROCESS, I MIGHT ADD TOO. YOU MIGHT SPEND \$2,000 PER
23 LICENSE.

24 Q. AND YOU SAID -- YOU JUST -- YOU MENTIONED THAT
25 YOU JUST APPLIED FOR LICENSURE IN THE DISTRICT OF

1 COLUMBIA?

2 A. YES.

3 Q. AND IN THAT -- IN THAT APPLICATION, WERE YOUR --
4 DID YOU INCLUDE YOUR U.S.M.L.E. TRANSCRIPT AS PART OF
5 YOUR APPLICATION?

6 A. YES.

7 MS. MEW: OBJECTION, YOUR HONOR. AGAIN,
8 I AM NOT SURE OF THE RELEVANCE OF THIS LINE OF
9 QUESTIONING.

10 THE COURT: OVERRULED.

11 BY DR. KITCHENS:

12 Q. SO DR. SHEPHERD, WITH -- RELATED TO YOUR ANSWER
13 THAT YOU JUST PREVIOUSLY SAID, DOES THE U.S.M.L.E.
14 TRANSCRIPT REMAIN IN -- IN OPINION -- IN YOUR EXPERTISE
15 -- IN YOUR EXPERIENCE, I'M SORRY.

16 DOES THE U.S.M.L.E. TRANSCRIPT REMAIN
17 WITH A MEDICAL PROVIDER THROUGHOUT THEIR CAREER FOR THE
18 PURPOSE OF DOCUMENTATION AND CONTINUITY?

19 A. ABSOLUTELY, YES.

20 DR. KITCHENS: THANK YOU. YOUR HONOR, I
21 HAVE NO FURTHER QUESTIONS.

22 THE COURT: ALL RIGHT. MS. MEW, YOUR
23 WITNESS.

24 MS. MEW: YOUR HONOR, I DO WANT TO BE
25 VERY RESPECTFUL OF DR. SHEPHERD'S TIME BUT COULD I

1 POSSIBLY HAVE FIVE MINUTES BEFORE I START? I THINK IT
2 WILL BE VERY QUICK I WANT TO CONFIRM THAT, IF THAT'S ALL
3 RIGHT.

4 THE COURT: SURE. DR. SHEPHERD, IS IT --
5 I ALSO -- WE ALL WANT TO BE RESPECTFUL OF YOUR TIME, IS
6 A FIVE-MINUTE BREAK OKAY?

7 THE WITNESS: I AM GOOD, YES, SIR. THANK
8 YOU, YOUR HONOR. I'M SORRY.

9 THE COURT: ALL RIGHT. THAT'S FINE.
10 LET'S COME BACK IN FIVE MINUTES.

11 DR. KITCHENS: THANK YOU, YOUR HONOR.

12 (BRIEF RECESS TAKEN.)

13 THE COURT: MS. MEW, THE FLOOR IS YOURS
14 FOR CROSS EXAMINATION.

15 MS. MEW: THANK YOU, YOUR HONOR.

16 CROSS-EXAMINATION

17 BY MS. MEW:

18 Q. AND THANK YOU DR. SHEPHERD FOR THAT TIME. THE
19 UPSIDE IS I DON'T HAVE VERY MANY QUESTIONS.

20 MY NAME IS CAROLINE MEW, I CAN'T REMEMBER
21 IF I INTRODUCED MYSELF EARLIER. I AM ONE OF THE LAWYERS
22 FOR THE NATIONAL BOARD OF MEDICAL EXAMINERS.

23 JUST --

24 THE COURT: EXCUSE ME. I HATE TO
25 INTERRUPT YOU RIGHT AT THE START. IS IT POSSIBLE TO

1 TURN YOUR CAMERA ON? I THINK ITS HELPFUL FOR THE
2 WITNESS, IF POSSIBLE.

3 MS. MEW: I BELIEVE IT IS ON. ARE YOU
4 NOT SEEING IT? I AM NOT SEEING YOU, YOUR HONOR. BUT I
5 AM SEEING MYSELF.

6 DR. KITCHENS: AND I SEE EVERYONE.

7 MS. MEW: OH.

8 DR. KITCHENS: I SEE EVERYONE.

9 THE COURT: MY COMPUTER IS DOING
10 SOMETHING WEIRD RIGHT NOW THEN. PLEASE PROCEED, GO
11 AHEAD.

12 BY MS. MEW:

13 Q. AND CAN YOU SEE ME, DR. SHEPHERD?

14 A. YES, I SEE EVERYONE.

15 Q. OKAY. GREAT. OKAY. THANK YOU.

16 HAVE YOU EVER PROVIDED MEDICAL CARE TO
17 DR. KITCHENS?

18 A. NO.

19 Q. HOW DO YOU KNOW DR. KITCHENS?

20 A. I HAVE MET DR. KITCHENS THROUGH A FELLOW
21 COLLEAGUE OF MINE AND I MET HIM THROUGH THAT COLLEAGUE
22 WHO KNEW THAT I WAS A MENTOR FOR MANY PERSONS WHO WANT
23 TO GO IN PSYCHIATRY, SO...

24 Q. AND DO YOU CONSIDER YOURSELF ONE OF HIS MENTORS?

25 A. YES.

1 MS. MEW: I DON'T HAVE ANY FURTHER
2 QUESTIONS. THANK YOU, DR. SHEPHERD.

3 THE COURT: DR. KITCHENS, DO YOU HAVE ANY
4 QUESTIONS ON THAT LINE OF QUESTIONING?

5 THE COURT: NO, YOUR HONOR, I DO NOT.

6 THE COURT: WELL, DR. SHEPHERD, DO YOU
7 HAVE TIME FOR ME TO ASK YOU A FEW QUESTIONS?

8 THE WITNESS: YES, SIR.

9 Q. OKAY.

10 A. THAT'S THE FIRST -- I'M SORRY, YOUR HONOR?

11 Q. FIRST QUESTION, I GUESS I AM CURIOUS, IS YOUR
12 RELATIONSHIP WITH DR. KITCHENS -- DID IT AFFECT YOUR
13 TESTIMONY IN ANY WAY TODAY?

14 A. NO.

15 Q. OKAY. SO THERE WAS -- YOU WERE ASKED A COUPLE
16 OF QUESTIONS ABOUT THE AMERICANS WITH DISABILITIES ACT,
17 THE ADA, AND I THINK YOU SAID YOU WERE FAMILIAR WITH THE
18 CONCEPT OF ACCOMMODATIONS UNDER THE ADA; IS THAT -- DID
19 I HEAR THAT?

20 A. YES, SIR.

21 Q. OKAY. AND YOU -- HAVE YOU GIVEN -- HAVE YOU
22 EVER PROVIDED A PATIENT WITH RECOMMENDED ACCOMMODATIONS
23 FOR TEST TAKING?

24 A. YES, I HAVE. AND ARE THOSE CHILDREN TYPICALLY
25 IN HIGH SCHOOL ADOLESCENT AGE, ELEMENTARY SCHOOL SCHOOL

1 AGE, I HAVE NOT WORKED A LOT WITH THOSE WHO ARE IN
2 MEDICAL SCHOOL, BUT YES, I HAVE PROVIDED FOR THOSE
3 TESTING ACCOMMODATIONS, AND I SEE HOW THEY ACTUALLY
4 CONCURRENTLY -- BECAUSE MANY TIMES THOSE PERSONS ARE IN
5 NEED OF EXTRA HELP. SO HONESTLY, I DON'T SEE THE
6 DIFFERENCE BETWEEN AGE WHEN THESE TESTING ACCOMMODATIONS
7 ARE NEEDED.

8 I AM ACTUALLY STRUCK BY THE SIMILARITIES,
9 HONESTLY, THAT OCCUR AS A PERSON PROGRESSES IN AGE AND
10 REGARDLESS OF EDUCATION THAT THESE ACCOMMODATIONS ARE
11 NEEDED. AND ONE OF THE REASONS I SAY THAT, THE
12 PROGRESSION, IS THAT I SEE WHERE CERTAIN CHILDREN ARE
13 NOT ABLE TO PROGRESS IN THEIR EDUCATION BECAUSE SOME
14 PEOPLE BELIEVE THAT THEY HAVE BEEN IN IT FOR TOO LONG,
15 THAT THEY NO LONGER NEED THE ACCOMMODATIONS.

16 SO I AM A FIGHTER AGAINST THAT BECAUSE IF
17 YOU HAD IT BACK WHEN YOU WERE A CHILD OR ADOLESCENT YOU
18 DON'T CHANGE JUST BECAUSE YOU BECAME NOW 30 OR 40 YEARS
19 OLD. THOSE ACCOMMODATIONS ARE NEEDED BECAUSE WE KNOW
20 THAT THAT DISORDER IS A FUNCTIONAL IMPAIRMENT.

21 Q. ALL RIGHT. WELL, THE NEXT QUESTION I HAVE FOR
22 YOU REQUIRES JUST A LITTLE BIT OF AN EXPLANATION AND I
23 GATHER YOU KNOW ENOUGH ABOUT WHAT THIS CASE IS ABOUT TO
24 APPRECIATE THAT, YOU KNOW, DR. KITCHENS IS PURSUING THIS
25 LAWSUIT TO SEEK AN ORDER FROM THIS COURT THAT THE NBME

1 HAS TO PROVIDE HIM WITH CERTAIN ACCOMMODATIONS FOR
2 TAKING THE BOARDS EXAMS.

3 AND THE NBME, AMONG OTHER THINGS, ONE OF
4 THE THINGS THE NBME HAS TOLD THIS COURT, AND I AM
5 EXPECTING TO HAPPEN AND WE WILL HAVE MORE DISCUSSION OF
6 THIS IN THE TRIAL, IS THAT THERE IS AN IMPORTANT
7 INTEREST THE NBME HAS IN MAINTAINING THE INTEGRITY OF
8 THE TEST FOR THE SAKE OF THE MEDICAL PROFESSION, THAT IS
9 AFTER ALL, WHY THERE ARE MEDICAL BOARDS.

10 AND IT'S -- ONE OF THE CONCERNS I HAVE ON
11 MY MIND IS HOW TO TAKE THOSE TWO CONCERNS, ON THE ONE
12 HAND THE IMPORTANT CONCERN OF THE ADA, OF MAKING SURE
13 THAT PEOPLE RECEIVE ACCOMMODATIONS THAT ARE APPROPRIATE,
14 AND ON THE OTHER HAND THE CONCERN OF THE NBME, THAT THE
15 TESTS BE -- HAVE ALL OF THE INTEGRITY THAT IT IS
16 SUPPOSED TO HAVE FOR THE SAKE OF THE MEDICAL PROFESSION,
17 AND TAKE BOTH OF THOSE CONCERNS AND THINK ABOUT THEM AT
18 THE SAME TIME IN THE RIGHT WAY.

19 SO MY QUESTION FOR YOU IS:

20 COULD YOU REFLECT ON THAT BALANCE, THOSE
21 TWO CONCERNS IN LIGHT OF ALL THE EXPERIENCE THAT YOU
22 HAVE HAD, ON BOTH SIDES OF THAT QUESTION, BOTH IN BEING
23 IN PART OF THE MEDICAL PROFESSION AND BOTH WITH REGARD
24 TO TEST TAKING ACCOMMODATIONS OR THE ADA AND MENTAL
25 ILLNESS GENERALLY?

1 A. YES. AND THANK YOU, YOUR HONOR, FOR BEING
2 SENSITIVE IN THAT. AND I LIKE THE WAY IN WHICH YOU ARE
3 APPROACHING THAT, BECAUSE IT IS A -- IT IS A FINE LINE
4 AND ONE OF THE THINGS I WOULD ASK YOU, AND ASK THIS
5 COURT TO REALLY THINK ABOUT IS THAT WHEN YOU ARE GOING
6 TO A TESTING SITUATION, THOSE WHO ARE ALREADY BEHIND THE
7 EIGHT BALL, IF YOU WOULD, THEY ARE NOT GOING IN THERE
8 WITH -- TRYING TO CHEAT THE EXAM.

9 THE EXAM -- THE WAY -- I REMEMBER VERY
10 CLEARLY, THERE IS CAMERAS THERE'S IS VARIOUS DIFFERENT
11 THINGS THAT ARE IN PLACE TO MAKE SURE THAT INTEGRITY OF
12 THE EXAM IS IN PLACE.

13 MY PROBLEM IS, IS THAT THOSE THINGS
14 REMAIN BUT THERE ARE PEOPLE WHO COME IN THAT YOU CANNOT
15 GAUGE THE LEVEL OF IMPAIRMENTS SUCH AS ANXIETY, SUCH AS
16 ADHD, AND IF THESE ACCOMMODATIONS ARE NOT PROVIDED
17 AND/OR IF THOSE ACCOMMODATIONS ARE NOT PROVIDED, HOW DO
18 YOU THEN ACCOUNT FOR THOSE PERSONS NOT BEING ABLE TO
19 FUNCTION AT THEIR ABILITY TO SCORE THE BEST ON THAT
20 EXAM.

21 I SAY THIS TO YOU, YOUR HONOR, I SEE WHEN
22 CHILDREN LITERALLY HAVE CHANGED THEIR TEST SCORES BASED
23 OFF OF HAVING CORRECT ACCOMMODATIONS, BEING ON THE RIGHT
24 MEDICATION. I HAVE HAD CHILDREN, AND IT LITERALLY
25 BRINGS TEARS TO MY EYES, THEY SAY, DR. SHEPHERD, I COULD

1 NOT LEARN.

2 IT IS SO -- IT IS SO INTERESTING WHEN
3 THESE BARRIERS ARE REMOVED AND THE TEACHERS ALLOW FOR
4 THESE ACCOMMODATIONS TO BE PUT IN PLACE.

5 THE INTEGRITY OF THE EXAM IS NOT GOING TO
6 BE DESTROYED. I MEAN, IT WAS HERE BEFORE I WAS BORN.
7 SO I DON'T WORRY ABOUT THAT. AND ESPECIALLY THE WAY IN
8 WHICH WE LIVE TODAY, EYES ON EVERYTHING.

9 MY PROBLEM IS WHEN WE KNOW THAT THERE ARE
10 ALREADY CERTAIN BARRIERS PUT IN PLACE AND SOME OF IT IS
11 DUE TO SKIN COLOR -- I DO NOT SHY AWAY FROM THAT -- AND
12 THEN THERE ARE CERTAIN EMOTIONAL AND OTHER MENTAL HEALTH
13 DISORDERS AND WE DO NOT ACCOMMODATE FOR THAT.

14 ONE OF THE MAJOR REASONS, AND THEN I AM
15 DONE, YOUR HONOR, ONE OF THE MAJOR REASONS WHY
16 PHYSICIANS, COLLEAGUES, DO NOT SEEK OUT MENTAL HEALTH
17 CARE, IS THAT BECAUSE THEY KNOW IT WILL FOLLOW THEM AS
18 THEY GO FROM STATE IS TO STATE.

19 IT IS ONE OF THE MAJOR ISSUES THAT COMES
20 UP IN AMERICAN ACADEMY OF CHILD AND ADOLESCENT
21 PSYCHIATRY THAT WE ARE DEALING WITH IN OUR GENERAL
22 ASSEMBLY RIGHT NOW, AND IT WILL BE REPEATED AGAIN IN THE
23 AMERICAN PSYCHIATRIC ASSOCIATION'S GENERAL ASSEMBLY
24 THAT'S GOING TO BE HAPPENING THIS WEEKEND, BECAUSE WE
25 KNOW PEOPLE ARE STRUGGLING.

1 JUST BECAUSE I HAVE AN M.D. DOES NOT MEAN
2 I DON'T HAVE MENTAL HEALTH ISSUES. SO WE HAVE TO MAKE
3 SURE THAT WE ARE SENSITIVE -- THAT'S WHY I APPRECIATE
4 YOUR SENSITIVITY -- TO KNOW HOW TO BE ABLE TO DO THESE
5 EXAMS AND IF SOMEONE WAS NOT PROVIDED THAT, THEY SHOULD
6 NOT BE PENALIZED FOR SOMETHING THAT SOMEONE DID NOT
7 ALLOW TO HAPPEN FOR ACCOMMODATIONS. THAT'S WRONG.

8 THE COURT: THANK YOU FOR YOUR PATIENCE
9 THERE.

10 NOW, IN THE SPIRIT OF FAIRNESS I WANT TO
11 MAKE SURE MS. MEW HAS THE OPPORTUNITY TO ASK ANY
12 FOLLOW-UP QUESTIONS, OR DR. KITCHENS, SO I WILL GO TO
13 YOU, MS. MEW, FIRST.

14 MS. MEW: THANK YOU, YOUR HONOR.

15 BY MS. MEW:

16 Q. DR. SHEPHERD, WHAT DO YOU UNDERSTAND THE
17 STANDARD OF THE AMERICANS WITH DISABILITIES ACT TO BE?

18 THE STANDARD FOR DISABILITY, I'M SORRY.

19 WHAT IS THE STANDARD FOR A DISABILITY
20 UNDER THE AMERICANS WITH DISABILITIES ACT?

21 A. THE STANDARD WOULD BE THAT -- THAT THEY ARE
22 TREATED FAIRLY AS THOSE WHO MAY NOT BE DISABLED, THAT'S
23 WHAT I WOULD -- IN SHORT.

24 Q. DO YOU KNOW THE DIFFERENCE BETWEEN THE STANDARDS
25 OF THE INDIVIDUALS WITH EDUCATION ACT, WHICH APPLIES TO

1 PUBLIC SCHOOLS FOR THEIR ACCOMMODATION DECISIONS AND THE
2 STANDARDS OF THE AMERICANS WITH DISABILITIES ACT?

3 A. DO I UNDERSTAND THE STANDARDS THAT THEY --

4 Q. DO YOU UNDERSTAND THE DIFFERENCE BETWEEN THE ADA
5 AND THE I-D-E-A STANDARDS?

6 A. I DO UNDERSTAND THE STANDARDS -- THE DIFFERENCE,
7 YES, I DO UNDERSTAND THE DIFFERENCE.

8 Q. ARE SOME OF THE RECOMMENDATIONS THAT YOU WERE
9 SPEAKING OF, THAT YOU WERE RECOMMENDING ACCOMMODATIONS
10 FOR INDIVIDUALS IN SCHOOL, WOULD THAT BE MAYBE PART OF
11 THE IEP PROCESS, THE INDIVIDUALIZED EDUCATION PROCESS --
12 OR INDIVIDUALIZED EDUCATION PLAN, ARE YOU FAMILIAR WITH
13 THAT?

14 A. YES.

15 Q. OKAY. AND WHEN YOU RECOMMENDED ACCOMMODATIONS
16 FOR THESE INDIVIDUALS IN SCHOOL, WAS IT PART OF -- PART
17 OF THE IEP PROCESS?

18 A. YES, IEP, RIGHT.

19 Q. FOR SCHOOL BASED ACCOMMODATIONS?

20 A. MM-HMM.

21 Q. OKAY.

22 MS. MEW: I DON'T HAVE ANY OTHER
23 FOLLOW-UP QUESTIONS, YOUR HONOR.

24 THE COURT: DR. KITCHENS, JUST ON THIS
25 LIMITED TOPIC I RAISED, AND MS. MEW ADDRESSED, DO YOU

1 HAVE ANY FOLLOW-UP QUESTIONS?

2 DR. KITCHENS: NO, I DO NOT, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 DR. SHEPHERD, THANK YOU VERY MUCH FOR
5 YOUR TIME. AND YOUR PATIENCE, AND YOU MAY BE EXCUSED.

6 THE WITNESS: ALL RIGHT. THANK YOU, YOUR
7 HONOR. THANK YOU, MS. MEW. THANK YOU, DR. KITCHENS.

8 YOU ALL HAVE A GOOD DAY.

9 MS. MEW: NICE TO MEET YOU, DR. SHEPHERD.

10 THE COURT: ALL RIGHT. DR. KITCHENS, THE
11 TIME IS BACK TO YOU.

12 DR. KITCHENS: ALL RIGHT. LET'S SEE
13 HERE. YOUR HONOR, ARE WE -- LET'S SEE -- ARE WE TAKING
14 A -- ARE WE ABLE TO TAKE A BREAK AT THIS POINT?

15 THE COURT: WELL, SO I ASSUME THE NEXT
16 STEP IS FOR YOU TO TAKE THE STAND AND TESTIFY?

17 DR. KITCHENS: YES.

18 THE COURT: WHY DON'T WE -- I THINK IT
19 WOULD SEEM LIKE WE ARE DOING ALL RIGHT. WHY DON'T WE
20 TAKE -- HOW ABOUT, IS TEN MINUTES OKAY?

21 DR. KITCHENS: YES, SIR. THAT WOULD BE
22 JUST FINE.

23 THE COURT: WHY DON'T WE TAKE TEN MINUTES
24 SO YOU CAN GET YOURSELF ALL SET UP AND READY FOR THAT;
25 OKAY?

1 DR. KITCHENS: YES, SIR. THANK YOU, YOUR
2 HONOR.

3 THE COURT: ALL RIGHT. SEE YOU IN TEN.
4 (BRIEF RECESS TAKEN.)

5 THE COURT: OKAY. DR. KITCHENS?

6 MS. MEW: YOUR HONOR, BEFORE WE START?
7 I'M SORRY.

8 THE COURT: OH, GO AHEAD, MS. MEW.

9 MS. MEW: I WAS GOING TO NOTE MY
10 OBJECTION, MY STANDING OBJECTION FOR THE RECORD.

11 THE COURT: THAT'S FINE.

12 MS. MEW: THANK YOU. WE HAVE AN ONGOING
13 OBJECTION TO THE INTRODUCTION OF TESTIMONY RELATED TO
14 CULTURAL OR RACE ISSUES GENERALLY, AND SPECIFICALLY AS
15 IT MIGHT SURROUND DR. KITCHENS ALLEGED PURSUIT OR NON
16 PURSUIT OF HEALTHCARE.

17 NONE OF THESE TOPICS ARE RELEVANT TO
18 WHETHER DR. KITCHENS IS DISABLED WITHIN THE MEANING OF
19 THE ADA, OR WHETHER THE DOCUMENTATION HE SUBMITTED TO
20 NBME, IN 2022, WAS SUFFICIENT TO SUPPORT HIS TESTING
21 ACCOMMODATION REQUESTS.

22 OUR OBJECTIONS GENERALLY FALL UNDER RULES
23 401 THROUGH 403, 602, AND 701.

24 WE ALSO HAVE AN ONGOING OBJECTION TO
25 INTRODUCTION OF TESTIMONY RELATED TO WHETHER OR HOW THE

1 U.S.M.L.E. TRANSCRIPT OR FAILING SCORES ON THE
2 U.S.M.L.E. TRANSCRIPT MAY AFFECT AN INDIVIDUAL'S
3 RESIDENCY SELECTION OR LICENSURE BECAUSE THIS IS ALSO
4 IRRELEVANT TO WHETHER DR. KITCHENS IS DISABLED WITHIN
5 THE MEANING OF THE ADA, OR WHETHER THE DOCUMENTATION HE
6 SUBMITTED TO NBME, IN 2022, WAS SUFFICIENT TO SUPPORT
7 HIS TESTING ACCOMMODATION REQUESTS.

8 AND AGAIN, OUR OBJECTIONS GENERALLY FALL
9 UNDER RULES 401 TO 403, 602, AND 701.

10 IF YOUR HONOR EXPECTS THAT HE WOULD
11 OVERRULE ANY OBJECTIONS TO TESTIMONY ON THESE TOPICS, I
12 PROPOSE OFFERING THIS AS STANDING OBJECTION IN ADVANCE
13 OF DR. KITCHENS' TESTIMONY TO PRESERVE THE RECORD
14 WITHOUT HAVING TO REPEAT THIS PARTICULAR SUBJECT-BASED
15 OBJECTION AND PRESERVING ALL OTHERS.

16 THE COURT: ALL RIGHT. THAT'S HOW WE ARE
17 GOING TO PROCEED. AT LEAST IN PART BECAUSE, YOU KNOW,
18 WE ARE ALMOST AT THE CONCLUSION OF DR. KITCHENS CASE AND
19 I HAVE THE LUXURY OF NOT HAVING A JURY HERE, SO WE ARE
20 GOING TO GET ALL OF THE TESTIMONY IN. BUT -- SO I WILL
21 -- THOSE OBJECTIONS WILL BE UNDERSTOOD AS STANDING
22 OBJECTIONS.

23 ANYTHING ELSE, MS. MEW?

24 MS. MEW: NO, YOUR HONOR, THANK YOU.

25 THE COURT: ALL RIGHT.

1 DR. KITCHENS, ARE YOU READY TO TESTIFY?

2 DR. KITCHENS: YES, YOUR HONOR.

3 I DO HAVE A QUICK QUESTION THERE, FOR
4 CLARIFICATION. DUE TO SOME DOCUMENTS THAT I -- OR
5 EXHIBITS THAT I MAY PRESENT, I AM OKAY FOR MS. MEW TO
6 OBJECT TO THOSE DOCUMENTS AFTER I OPEN THEM UP, IF --
7 WHEN -- FOR THEM TO BE ADMITTED INTO THE RECORD.

8 I AM NOT SURE IF THAT'S WHAT YOU WERE
9 IMPLYING?

10 THE COURT: WELL, MY EXPECTATION WOULD BE
11 AS YOU ARE -- YOU WILL BE TESTIFYING IN THE NARRATIVE
12 AND THAT WHEN YOU WOULD LIKE TO CALL UP AN EXHIBIT YOU
13 WILL, YOU KNOW, YOU WILL REFER TO THE EXHIBIT.

14 IF IT HAS ALREADY BEEN ADMITTED THAT'S
15 EASY, BUT IF IT HAS NOT BEEN ADMITTED YOU WILL BRING IT
16 UP AND REFER TO IT BY IDENTIFICATION AND YOU YOURSELF
17 WILL LAY THE FOUNDATION, AND THEN IF YOU WOULD LIKE IT
18 TO BE ADMITTED YOU CAN MOVE AND WE WILL HEAR IF MS. MEW
19 HAS ANY OBJECTION.

20 JUST THE WAY WE HAVE BEEN DOING, EXCEPT
21 YOU WILL BE DOING BOTH -- YOU BE BOTH, YOU KNOW, KIND OF
22 BOTH THE LAWYER AND THE WITNESS. YOU WILL BE TRYING TO
23 MOVE THE EXHIBIT IN AS YOU ARE DESCRIBING WHAT IT IS.

24 DR. KITCHENS: YES, SIR. UNDERSTOOD,
25 YOUR HONOR.

1 THE COURT: OKAY.

2 ARE YOU READY TO BE SWORN IN?

3 DR. KITCHENS: YES, SIR. I MEAN, YES,
4 YOUR HONOR.

5 THE COURT: ALL RIGHT. LYNN, COULD YOU
6 PLEASE SWEAR IN DR. KITCHENS.

7 THE COURT REPORTER: CAN YOU PLEASE RAISE
8 YOUR RIGHT HAND.

9 (PLAINTIFF, DR. MARKCUS KITCHENS, IS SWORN.)

10 THE REPORTER: PLEASE STATE AND SPELL
11 YOUR NAME FOR THE RECORD.

12 DR. KITCHENS: YES, M-A-R-K-C-U-S,
13 K-I-T-C-H-E-N-S, JUNIOR.

14 DIRECT EXAMINATION (SELF-CONDUCTED)

15

16 BY DR. KITCHENS:

17 Q. SO, AS EVERYONE MAY KNOW, AND YOUR HONOR, AS YOU
18 MAY KNOW, MY NAME VERY WELL, IS DR. MARKCUS KITCHENS,
19 JUNIOR, AND I AM THE OLDEST SON OF MS. KING AND MARKCUS
20 KITCHENS, SENIOR, AND I AM THE OLDEST OF 21 GRANDKIDS.

21 I LIVE HERE CURRENTLY IN RICHMOND,
22 KENTUCKY, WITH MY WIFE, AMELIA KITCHENS. I AM CURRENTLY
23 STUDYING FULL-TIME FOR THE U.S.M.L.E. STEP EXAMINATIONS.

24 WHEN I WAS IN THE FIRST GRADE, MY TEACHER
25 WANTED TO HOLD ME BACK BECAUSE I WAS DISRUPTIVE IN

1 CLASS, OVER TALKATIVE, AND DID NOT READ AT THE SAME
2 LEVEL AS MY CLASSMATES THERE.

3 MS. MEW: OBJECTION; LACK OF FOUNDATION.
4 BY DR. KITCHENS:

5 Q. BUT MY MOTHER, WHOM YOU HEARD TESTIMONY FROM
6 YESTERDAY, DECIDED AGAINST HOLDING ME BACK AND HAD THE
7 ADMINISTRATION ALLOW ME TO MOVE FORWARD TO THE NEXT
8 GRADE WITH MY PEERS.

9 WHEN I WAS IN THE SECOND GRADE, I HAD MY
10 TEACHER, MRS. MARTIN. MRS. MARTIN SAW THAT THERE WAS AN
11 ISSUE WITH MY READING. JUST SLOWER THAN EVERYONE ELSE
12 AND THAT I NEEDED SOME EXTRA ATTENTION. SHE STARTED
13 GIVING ME THAT ONE-ON-ONE TEACHING AND WHAT SHE DID WAS
14 SHE TALKED WITH MY MOTHER AND RECOMMENDED THAT I SEEK
15 TREATMENT FROM MY PEDIATRICIAN.

16 DR. JORDAN EVALUATED ME AND RECOMMENDED
17 THAT I BE PUT ON RITALIN. FOR THOSE THAT MIGHT NOT
18 KNOW, RITALIN IS A MEDICATION GIVEN FOR CHILDREN FOR
19 ADHD. NEITHER I, NOR MY MOTHER, HAD THE ACTUAL -- HAD
20 THE ACTUAL EVALUATION IN HAND DUE TO THE TIMING OF THIS
21 LITIGATION AND THE TIMING OF WHEN THE DOCUMENT -- WHEN
22 THE EVALUATION WAS CONDUCTED SO MANY YEARS AGO.

23 BUT AS SHE TESTIFIED, SHE DISTINCTLY
24 REMEMBERS THAT THE PEDIATRICIAN WANTED TO GIVE ME THIS
25 PARTICULAR DRUG, ADDERALL. AT THAT TIME, MY MOM WAS IN

1 HER EARLY -- MY MOM WAS IN HER EARLY 20S, AND HAD TWO
2 SMALL BOYS TO TAKE CARE OF, ALL ON HER OWN. SHE SAW
3 WHAT THE MEDICATION DID TO OTHER CHILDREN AND WHEN THEY
4 PRESCRIBED THIS MEDICATION, AND SHE DID NOT WANT THOSE
5 TYPE OF SIDE EFFECTS TO HAPPEN TO HER CHILD.

6 ALTERNATIVELY, THE PEDIATRICIAN
7 RECOMMENDED THAT I HAVE A STRUCTURED, ORGANIZED, HOME
8 AND LIFESTYLE THAT WOULD SET A SCHEDULE THAT WOULD ALLOW
9 ME TO FOCUS ON OTHER AREAS.

10 SO THAT'S EXACTLY WHAT MY MOM DID. SHE
11 DECIDED AT THE BEGINNING OF EVERY SINGLE SCHOOL YEAR TO
12 HAVE THAT ONE-ON-ONE CONVERSATION WITH MY TEACHERS, TO
13 LET THEM KNOW THAT I SHOULD BE GIVEN THESE -- SET ASIDE
14 FROM THE REST OF MY PEERS.

15 IT WAS HERE THAT MY MOM WOULD TAKE ME.
16 WHEN I HAD TO COME HOME FROM SCHOOL, SHE WOULD TAKE ME
17 TO HAVE EXTRA CURRICULAR ACTIVITIES FOR TUTORING, SUCH
18 AS PROFESSIONAL TUTORING FROM KUMON, HOOKED ON PHONICS,
19 A STABILIZED ENVIRONMENT AND ALSO USING JOURNALS TO MAKE
20 SURE THAT I WAS UP TOP OF ALL OF MY ALL -- UP TOP OF ALL
21 OF THE THINGS THAT I WAS SUPPOSED TO BE SET TO DO.

22 I STAYED IN KUMON DURING MY ELEMENTARY
23 AND INTERMEDIATE SCHOOL. AS YOU SAW ON MY ELEMENTARY
24 SCHOOL TRANSCRIPT I HAD POOR CONDUCT DUE TO BEING VERY
25 EASILY DISTRACTED, OVERLY TALKATIVE, INTERRUPTING THE

1 TEACHERS, AND BEING FIDGETY ALL ARE CLASSIFICATIONS OF

2 -- CLASSIC CLASSIFICATIONS OF ADHD.

3 I WAS PUT IN AN OFFICIAL INDIVIDUALIZED
4 PROGRAM FOR READING, WHICH IS THE SAIL PROGRAM. AT THAT
5 INSTRUCTION -- AT THE INSTRUCTION OF MY MOTHER, THIS IS
6 WHEN SHE WENT AND HAD THE PROFESSORS -- OR THOSE
7 TEACHERS HAD MY OWN DESK SET RIGHT NEXT TO THE TEACHER
8 SO THAT I COULD DECREASE THE DISCRETIONS AND ASK MORE
9 QUESTIONS AND ACCESS TO THESE TEACHERS WITH THE
10 ONE-ON-ONE INSTRUCTION.

11 THOSE TEACHERS ALSO KNEW MY MOTHER VERY
12 WELL, AND KNEW THAT MY MOTHER WAS THE TYPE OF WOMAN THAT
13 WOULD -- THAT WAS INVESTED IN HER CHILD'S BEHAVIOR AND
14 TO HAVE RESPECT FOR ADULTS AND EDUCATION.

15 SHE TESTIFIED THAT EDUCATION IS VERY KEY
16 TO HER AND TO OUR FAMILY.

17 IN MIDDLE SCHOOL IT WAS NO LONGER COOL --

18 MS. MEW: CAN WE STOP BEFORE WE GO TO
19 MIDDLE SCHOOL, YOUR HONOR, SO I CAN RAISE SOME
20 OBJECTIONS ON THE RECORD?

21 I THINK YOU ARE ON MUTE, YOUR HONOR.

22 THE COURT: DR. KITCHENS, LET'S PAUSE

23 HERE AND HEAR MS. MEW OUT.

24 MS. MEW: WELL, TWO POINTS YOUR HONOR.

25 I AM AFRAID THIS IS NOT WORKING BECAUSE

1 THIS NARRATIVE TESTIMONY IS ALLOWING A STRING OF
2 TESTIMONY THAT I THINK IF IT WAS A QUESTION AND ANSWER
3 SESSION WOULD BE BLOCKED UNDER THE EVIDENTIARY RULES,
4 THERE IS A LACK OF FOUNDATION, THERE IS DISCUSSION OF
5 WHAT TEACHERS WERE DOING AND WHY, THERE WAS A DISCUSSION
6 OF WHAT A PEDIATRICIAN DID, WHAT HIS MOTHER DID, A
7 DISCUSSION OF AN INDIVIDUALIZED PROGRAM FOR READING THAT
8 I DON'T THINK HE HAS ANY KNOWLEDGE OF, IT'S NEVER COME
9 UP BEFORE SO THIS IS CERTAINLY SOMETHING HE IS JUST
10 READING IN THE RECORDS.

11 AND WE ARE GOING THROUGH -- IT'S VERY
12 PREJUDICIAL, YOUR HONOR, FOR HIM TO BE ABLE TO SIT HERE
13 AND GIVE THIS SPEECH ABOUT HIS LIFE, WHILE OTHER
14 WITNESSES AND OUR WITNESSES HAVE TO GO THROUGH THIS KIND
15 OF PROCESS SO I --

16 THE COURT: I HEAR YOU. THE -- THERE IS
17 A COUPLE OF THINGS ON MY MIND HERE. ONE IS THAT I --
18 THE OBSERVATIONS YOU ARE MAKING ABOUT THE TESTIMONY, I
19 AM ALSO MAKING SO -- AND THOSE ARE GOING TO BE ADDRESSED
20 APPROPRIATELY WHEN I AM MAKING FACTUAL FINDINGS.

21 SO IT'S NOT AN ENORMOUS -- IT'S NOT -- I
22 DON'T REALLY -- I THINK MOST OF THE TIMES I DON'T
23 NECESSARILY NEED THE OBJECTIONS TO UNDERSTAND WHERE IT'S
24 COMING FROM, ITS NOT THAT THERE'S NOT NARRATIVE IN WHAT
25 YOU ARE SAYING.

1 AS A PRACTICAL MATTER, I DON'T WANT TO
2 HAVE HIM ASK HIMSELF QUESTIONS. MY MIND HAS NOT CHANGED
3 ABOUT THAT, BUT I WOULD LIKE YOU TO BE ABLE -- I WOULD
4 LIKE YOU TO BE HEARD AND BE ABLE TO LODGE THE OBJECTIONS
5 YOU WOULD LIKE TO LODGE, I THINK THAT'S YOUR RIGHT.

6 SO -- AND DR. KITCHENS, FROM YOUR POINT
7 OF VIEW ON ONE HAND, I DON'T WANT TO INTERRUPT YOUR
8 TESTIMONY BECAUSE I WANT THE TESTIMONY TO COME IN IN A
9 CLEAR WAY THAT'S GOING TO BE HELPFUL TO ME, BUT ON THE
10 OTHER HAND ITS ACTUALLY GOOD FOR YOU TO HEAR THE
11 OBJECTIONS BECAUSE IN SOME CASES, MAYBE NOT ALL OR MAYBE
12 NOT ANY THAT'S UP TO YOU, IN SOME CASES YOU MIGHT LIKE
13 TO ADDRESS THEM AND MAYBE SAY A FEW MORE THINGS. I
14 DON'T KNOW.

15 WHY DON'T WE DO THIS, AND MAYBE THIS WILL
16 -- THIS IS GOING TO BE MOSTLY ON YOU, DR. KITCHENS, BUT
17 WHY DON'T WE -- YOU ARE MOVING THROUGH THE TESTIMONY
18 REALLY QUICKLY. WHY DON'T YOU, WHETHER IT'S, YOU KNOW,
19 MAYBE WHEN YOU ARE CHANGING POINTS OR TOPICS OR SUB
20 TOPICS, COULD BE EVERY FEW SENTENCES OR COULD BE
21 WHATEVER, TAKE A LITTLE -- TAKE A PAUSE IN THE
22 TESTIMONY.

23 WE ARE ALL ON VIDEO HERE SO LOOK, TAKE A
24 LOOK AT MS. MEW, AND JUST GIVE THAT AIR SPACE SO SHE CAN
25 INTERPOSE SOME OBJECTIONS, BECAUSE THAT'S PART OF WHAT

1 IS CREATING THE DIFFICULTY IS THE VIDEO WHERE IT'S HARD
2 FOR HER -- IT'S JUST HARD AS A HUMAN MATTER TO
3 INTERRUPT.

4 SO WHY DON'T YOU, DR. KITCHENS, TRY TO
5 TAKE THIS ON AS A RESPONSIBILITY OF LEAVING BREAKS, YOU
6 KNOW, IN APPROPRIATE TIMES EVERY FEW SENTENCES. DON'T
7 WAIT TOO LONG FOR MS. MEW TO INTERPOSE OBJECTIONS. IT
8 IS AN INTERRUPTION, BUT ON OTHER HAND IN SOME CASES IT
9 MIGHT BE USEFUL FOR YOU TO HEAR THAT; OKAY?

10 DR. KITCHENS: UNDERSTOOD, YOUR HONOR.

11 THE COURT: AND MS. MEW, GENERALLY
12 SPEAKING, YOU PROBABLY APPRECIATE THIS BY NOW, I AM NOT
13 GOING TO SUSTAIN A LOT OF THE OBJECTIONS AND LIKE CUT
14 OFF HIS TESTIMONY. WE HAVE COME THIS FAR, BUT I WANT
15 YOU TO BE ABLE TO MAKE THE OBJECTIONS BECAUSE I MAY NEED
16 THEM LATER. SO -- ALL RIGHT?

17 MS. MEW: I UNDERSTAND. YES. I
18 UNDERSTAND. WE WILL SEE HOW IT GOES.

19 THE COURT: SO DR. KITCHENS, PICKUP WHERE
20 YOU LEFT OFF AND PLEASE TRY EVERY -- WHETHER ITS --
21 DEPENDING WHAT EXACTLY YOU'RE SAYING, WHAT COULD BE A
22 SENTENCE OR COULD BE A FEW SENTENCES, LEAVE SOME AIR
23 TIME FOR MS. MEW.

24 DR. KITCHENS: WILL DO, YOUR HONOR.

25 I MEAN, UNDERSTOOD, YOUR HONOR.

1 THE COURT: YES.

2 BY DR. KITCHENS:

3 Q. MOVING ON.

4 IN MIDDLE SCHOOL, IT WAS NO LONGER -- I
5 FELT THAT IT WAS NO LONGER COOL FOR ME TO SIT ALONE NEXT
6 TO THE TEACHERS, ESPECIALLY IN SIXTH GRADE WHEN THE
7 THING OF THOSE MATTERS WAS TRYING TO BE COOL.

8 SO I STARTED TO SIT IN THE FRONT OF THE
9 CLASS, GOING OUTSIDE OF SIXTH GRADE I'M SORRY, TOWARDS
10 SEVENTH GRADE I STARTED DOING -- SITTING AT THE FRONT OF
11 THE CLASS TO MAKE SURE THAT I COULD PAY ATTENTION TO
12 WHAT THE TEACHER WAS SAYING.

13 AROUND THIS TIME I BEGAN TO STRUGGLE WITH
14 READING, PARTICULARLY ON SCHOOL BASED TESTS WITHIN SET
15 TIME LIMITS BUT, FOR EXAMPLE, ON THE TENNESSEE
16 COMPREHENSIVE ASSESSMENT I FINISHED AMONG THE LAST IN MY
17 CLASS AND EVEN THOUGH THE TEST WAS ONLY AN ASSESSMENT
18 FOR THE STATE, I FELT EMBARRASSED BY HOW LONG IT TOOK
19 FOR ME TO COMPLETE THIS PARTICULAR EXAMINATION.

20 LOOKING BACK NOW, WHEN THE -- WHEN
21 READING THE PASSAGES AND QUESTIONS BECAME MUCH LONGER OR
22 COMPLEX, I THEN BEGAN TO HAVE THIS DIFFICULTY STAYING
23 FOCUSED ON WHAT WAS IN FRONT OF ME.

24 I STARTED -- AT THIS TIME I STARTED USING
25 PLANNERS AND MAINTAINING CALENDARS AND EVEN USING ALARMS

1 THROUGHOUT THE DAY TO KEEP MYSELF ON TASK. IT WAS IN
2 MIDDLE SCHOOL THAT OUR SCHOOL STARTED TO PROVIDE THESE
3 THINGS AND THAT'S WHEN I REALLY STARTED TO LOVE WRITING
4 DOWN THESE PARTICULAR MATERIALS.

5 EVEN THOUGH THE SCHOOL SUPPLIED US WITH A
6 BASIC MONDAY THROUGH FRIDAY TYPE OF CALENDAR, I EVEN --
7 I TOLD MY MOM, I SAID NO, I NEED A BIGGER ONE, I NEED
8 ONE THAT IS MORE DETAILED THAT WAY I CAN SEPARATE WHAT
9 SCHOOLWORK IS AT THE TOP AND THEN ALSO WHAT EXTRA
10 CURRICULARS, YOU KNOW, THINGS THAT I NEEDED TO GET DONE
11 AT HOME WOULD BE PUT AT THE BOTTOM OF THE -- AT THE
12 BOTTOM OF THIS PARTICULAR JOURNAL.

13 AND LOOKING BACK NOW, I AM KIND OF UPSET
14 WITH MYSELF THAT I DID NOT SUBMIT THESE JOURNAL THAT I
15 ACTUALLY STILL HAVE IN MY POSSESSION, SHOWING ALL OF
16 THOSE DETAILS ALL THE WAY BACK FROM 2010, AND EVEN
17 FURTHER BACK FROM THERE.

18 BUT IN ORDER TO GET THIS SCHOOLWORK DONE,
19 I WOULD GO INTO MY ROOM AND SHUT MYSELF OUT WITH ANY
20 DISTRACTIONS. I WOULD EVEN STUDY ALMOST EVERY SINGLE
21 DAY, EVEN ON THE WEEKENDS AND WOULD GET MY -- PUT MYSELF
22 INTO A SITUATION WHERE I WOULD BECOME FRUSTRATED BECAUSE
23 I WOULD SEE ALL OF MY FRIENDS AND MY BROTHER, ALL WHO
24 CAN PROCRASTINATE, GO OUTSIDE AND PLAY AND HALF
25 STUDYING, BUT GET BETTER GRADES OR RECEIVE BETTER GRADES

1 THAN I WOULD. AND TO ME --

2 MS. MEW: OBJECTION, YOUR HONOR, TO THE
3 EXTENT HE IS TALKING ABOUT WHAT OTHERS ARE DOING AND
4 WHAT THAT MEANS IN TERMS OF THEIR EFFORTS AND ABILITIES
5 BY DR. KITCHENS:

6 Q. IT WASN'T FAIR FOR ME. I DIDN'T THINK SO. AND
7 THESE ARE THINGS THAT ARE COMMON AMONG CHILDREN. WHEN
8 YOU ARE IN MIDDLE SCHOOL AND ELEMENTARY SCHOOL, YOU COME
9 HOME AND YOU WANT TO GO OUTSIDE AND PLAY. BUT BECAUSE
10 OF THESE PARTICULAR INSTANCES, I WAS NOT ABLE TO DO
11 THAT. I HAD TO BE IN THE HOUSE.

12 YOU HAVE HEARD TESTIMONY FROM MY MOTHER,
13 WHO -- WHO I SECOND ON THIS PARTICULAR NOTION HERE, THAT
14 -- I'M SORRY ON MY WORDS OF -- BEING AT HOME TRYING MY
15 BEST TO BE ON PAR WITH EVERYONE ELSE.

16 IF I WAS TOLD THAT I HAD A TEST IN TWO
17 WEEKS FROM THAT DAY, I WOULD THEN WRITE DOWN IN MY
18 PLANNER ON THE DAY I RECEIVED -- OF WHEN THE TEACHER
19 TOLD US THAT WE HAD IT, THE TEST COMING, AND DRAW A LINE
20 OVER SPECIFICALLY TO THAT PARTICULAR DAY TO KNOW HOW
21 MANY DAYS I WOULD HAVE TO STUDY, TO MAKE SURE THAT I
22 WOULD KNOW THE INFORMATION OR AT LEAST BE ABLE TO
23 UNDERSTAND THE INFORMATION FOR THE EXAM.

24 FOR ME, THIS WAS EXTREMELY EXHAUSTING
25 HAVING TO DO ALL OF THESE EXTRA THINGS JUST TO BE

1 AVERAGE.

2 I WOULD LIKE TO BRING UP NOW OUR JOINT
3 EXHIBIT 3.

4 SO AS YOU CAN SEE HERE -- IS IT SHOWN
5 HERE ON THE SCREEN, YOUR HONOR?

6 THE COURT: YES, NO PROBLEMS.

7 BY DR. KITCHENS:

8 Q. OKAY. AS YOU CAN SEE?

9 THE COURT: BEFORE YOU PROCEED WITH
10 EXHIBIT -- JOINT EXHIBIT 3 IT WOULD ACTUALLY PROBABLY BE
11 HELPFUL FOR -- GENERALLY WHEN YOU ARE DOING EXHIBITS,
12 COULD YOU GIVE ME A QUICK REMINDER WHAT WE ARE LOOKING
13 AT.

14 DR. KITCHENS: YES, SIR. SORRY, YOUR
15 HONOR.

16 BY DR. KITCHENS:

17 Q. THIS HERE IS A DOCUMENTATION OF MY -- OF MY --
18 MY HIGH SCHOOL TRANSCRIPTS.

19 SO AS YOU CAN SEE HERE AT THE -- SEE HERE
20 AT THE RIGHT-HAND CORNER ON THIS PAGE, I TOOK THE ACT
21 THREE DIFFERENT TIMES. MY FIRST ATTEMPT WAS ON
22 DECEMBER 13, 2008. I STUDIED ON MY OWN WITH PREP BOOKS
23 AND PREP EXAMS FOR MONTHS JUST TO PERFORM IN THE
24 25TH PERCENTILE, WHICH IS FAR FROM AVERAGE.

25 MS. MEW: YOUR HONOR, I OBJECT TO THE

1 STATEMENT OF PERCENTILES. IT'S NOT ON THE FORM AND I'M
2 NOT SURE WHAT THE BASIS IS FOR THAT.

3 BY DR. KITCHENS:

4 Q. KNOWING I WAS NOT GOING TO GET INTO A GOOD
5 COLLEGE, WITH THIS PARTICULAR ACT SCORE I WAS ENCOURAGED
6 BY MY GUIDANCE COUNSELOR, MRS. WALLER, WHO HAD A
7 PERSONAL INVESTMENT IT SEEMS LIKE INTO MY FUTURE, AND
8 INFORMED ME AND ENCOURAGED ME -- ACTUALLY SHE REALLY
9 DIDN'T GIVE ME A CHOICE -- THAT I SHOULD DO A SECOND
10 ATTEMPT ON THE ACT, WHICH I TOOK ON APRIL 4, 2009.

11 AFTER MONTHS OF STUDYING, I ONLY
12 PERFORMED IN THE 50 PERCENTILE AT THIS TIME, AND AT THIS
13 TIME IT WAS ALSO NOT CONSIDERED TO BE IN THE AVERAGE.

14 STILL, NOT SATISFIED, IN THE FALL, I
15 DECIDED THAT I WOULD -- NO, SORRY.

16 IN THE FALL, MY SENIOR YEAR, AS WE CAN
17 SEE HERE, I HAVE AN ACT PREP COURSE. I TOOK THIS -- I
18 TOOK THIS PARTICULAR COURSE BECAUSE MY SCHOOL DIDN'T
19 GIVE ME A CHOICE. THERE WERE CERTAIN PEOPLE THAT WILL
20 THEY LOOKED FOR IN A CRITERIA AND IF I -- I DON'T KNOW
21 SPECIFICALLY IF THIS IS TRUE OR NOT, BUT THE -- EACH
22 SCHOOL WAS GIVEN SPECIFIC -- A FUNDING FOR THIS ACT PREP
23 COURSE FOR PEOPLE WHO HAD -- WHO HAD PERFORMED SO POORLY
24 ON THIS EXAM REPEATEDLY, WHICH IS WHY I WAS PUT INTO
25 THIS COURSE.

1 SO THIS COURSE WAS DESIGNED TO HELP COACH
2 STRUGGLING STUDENTS TO LEARN TIME MANAGEMENT, HOW TO
3 SKIM LONGER READING --- FOR READING FOR COMPREHENSION,
4 AND HOW TO TAKE THE EXAM ITSELF.

5 AFTER -- AFTER THE PREP COURSE -- IF WE
6 CAN BRING THAT EXHIBIT BACK UP, PLEASE? LET'S SEE HERE.
7 SORRY. I'LL CONTINUE, I THINK WE HAVE A TECHNICAL
8 GLITCH HERE. YES, HERE WE ARE.

9 SO AFTER I HAD PERFORMED -- AND WENT
10 THROUGH THIS PARTICULAR COURSE YOU CAN SEE THAT MY
11 READING COMPREHENSION AND ENGLISH SCORES IMPROVED AT THE
12 BOTTOM COMPARED TO THE REST.

13 I DID NOT HAVE ACCOMMODATIONS ON ANY OF
14 THESE ATTEMPTS -- ON ANY OF THESE ATTEMPTS. IN FACT, I
15 WAS NOT AWARE THAT EVEN SUCH RESOURCES EVEN EXISTED.
16 THIS WASN'T SOMETHING THAT PEOPLE IN MY COMMUNITY REALLY
17 SPOKE ABOUT AND ESPECIALLY IN THIS PARTICULAR
18 ENVIRONMENT, OUR SCHOOLING.

19 FROM ELEMENTARY SCHOOL, TO MIDDLE SCHOOL,
20 TO HIGH SCHOOL WAS ALL RIGHT THERE WITHIN THE SAME
21 VICINITY. SO FOR ELEMENTARY SCHOOL, IT WAS ONLY A BLOCK
22 DOWN THE ROAD FROM OUR MIDDLE SCHOOL. THE MIDDLE SCHOOL
23 WAS RIGHT NEXT DOOR FROM -- RIGHT ACROSS THE STREET --
24 I'M SORRY -- ADJACENT TO OUR HIGH SCHOOL.

25 SO WITH THIS BEING SAID WE ALL WENT TO

1 SCHOOL TOGETHER FROM ELEMENTARY SCHOOL ALL THE WAY UP
2 AND TO KNOW THAT SOMEONE WOULD BE ASKED FOR THESE TYPE
3 OF ACCOMMODATIONS OR EVEN BE AWARE OF THOSE WAS JUST NOT
4 SOMETHING THAT WE DID.

5 AND WE CAN REMOVE THIS DOCUMENT HERE AS
6 WELL.

7 ONE THING THAT I WOULD ALSO SAY IS THAT
8 BY HAVING HAVING SUCH A TIGHT NICHE OF COMMUNITY AND OUR
9 PARENTS ALL KNEW EACH OTHER BECAUSE WE ALL GREW UP
10 TOGETHER AND GOING TO A SMALL SCHOOL WHERE MY GRADUATING
11 CLASS WAS ONLY ROUGHLY 120 PEOPLE AND MY GRADUATING
12 CLASS -- MY CLASSROOM SIZES, TO THE STUDENT TEACHER
13 RATIO, WAS VERY SMALL.

14 I CAN REMEMBER THE MOST I HAVE HAD IN MY
15 CLASS AT ANY GIVEN POINT WAS PROBABLY 15 -- 15 TO 20
16 PEOPLE, IN ANY CLASS. AND AS HIGH SCHOOL, AS WE GET
17 TOWARDS 12TH GRADE, MY SCHOOL WAS SET UP TO GO IN
18 DIFFERENT PATHWAYS. SO FRESHMAN YEAR YOU HAD FRESHMAN
19 ACADEMY.

20 THEN WHEN YOU GO INTO YOUR SOPHOMORE
21 YEAR, YOUR 10TH-GRADE YEAR OF HIGH SCHOOL, YOU HAD A
22 CHOICE TO GO INTO ENGINEERING ACADEMY, COMMUNICATIONS
23 ACADEMY, SCIENCE ACADEMY.

24 SO YOU ARE NOW WEAVING DOWN INSTEAD OF
25 HAVING THIS BIG BULK OF PEOPLE IN THE CLASS WHO DON'T

1 CARE ABOUT THE TOPICS, ARE NOW WEAVED DOWN INTO IN
2 DIFFERENT COHORTS. WHEREAS, AND NOW I AM IN A CLASSROOM
3 OF TEN PEOPLE TO MY TEACHER, WHICH AUTOMATICALLY SEEMS
4 TO GIVE YOU THAT ONE-ON-ONE INTERACTION WITH YOUR
5 TEACHERS BECAUSE THEY'RE PERSONALLY INVESTED AND THEY
6 HAVE THE TIME TO GIVE THAT INDIVIDUALIZED -- IF YOU ARE
7 THERE YOU ARE NOT UNDERSTANDING, VERSUS HAVING A ROOM
8 FULL OF 200 PEOPLE AND THE PROFESSOR DON'T EVEN HAVE A
9 RECOLLECTION OF WHO YOU ARE, RATHER THAN JUST A PIECE OF
10 PAPER THAT THEY GAVE A GRADE TO.

11 I WILL STOP HERE FOR GOOD? OKAY.

12 I WILL SAY ALSO, IT IS IMPORTANT TO NOTE
13 THAT WHILE I WAS EVALUATED AND DIAGNOSED WITH ADHD IN
14 THE SECOND GRADE, I WAS TOO YOUNG TO REMEMBER THE
15 PERSPECTIVE AND I HAD NO REASON TO APPLY FOR THESE
16 ACCOMMODATIONS DUE TO THE DUTY THAT MY MOM DID TO MAKE
17 SURE -- TO ENSURE THAT I WAS ABLE TO FOCUS WELL IN THE
18 CLASS BY SPEAKING TO EVERY LAST ONE OF THOSE TEACHERS
19 FROM SECOND GRADE TO FIFTH GRADE.

20 THE AMOUNT OF TIME THAT I SPENT STUDYING
21 FOR AN EXAM OR QUIZ WAS WHAT I HAD TO DO TO TRY TO MAKE
22 SOMETHING OF MYSELF. I DID NOT WANT TO BE A STATIC. I
23 WANTED TO DO GOOD. I DIDN'T WANT TO BE THAT PERSON ON
24 WELFARE. I DIDN'T WANT TO BE LIKE SOME OF THOSE PEOPLE
25 THAT I NOTICED IN MY FAMILY WHO WERE ON EVERY SINGLE

1 SUBSIDIZED THING THAT THE GOVERNMENT OFFERED.

2 I WANTED SOMETHING BETTER FOR MYSELF AND
3 SO DID MY MOM AND THAT'S WHY, AS SHE SAID IN HER
4 TESTIMONY YESTERDAY, THAT EDUCATION WAS KEY TO HER. AND
5 FROM A PERSONAL EXPERIENCE, I REMEMBER MY MOTHER SAYING
6 TO ME AND MY BROTHER, WHO IS NOW A C.P.A., AN
7 ACCOUNTANT, THAT EDUCATION IS KEY. EDUCATION WILL OPEN
8 UP DOORS FOR YOU. EDUCATION IS SOMETHING THAT ONCE YOU
9 HAVE IT AND YOU KNOW IT, NO ONE CAN EVER TAKE IT FROM
10 YOU.

11 SO MY JOB, AS A MOTHER IS TO GO TO WORK,
12 IS TO PROVIDE FOR YOU, PUT FOOD ON THE TABLE AND CLOTHES
13 ON YOUR BACK AND YOUR JOB, AS MY CHILD, IS TO GO TO
14 SCHOOL AND FOCUS ON GETTING THE BEST GRADES THAT YOU CAN
15 SO THAT YOU CAN GET INTO A GOOD COLLEGE. AND SHE
16 INSTILLED IN US AT A VERY YOUNG AGE, WHICH IS WHY WE
17 UNDERSTOOD THE IMPORTANCE OF IT.

18 AFTER GRADUATION OF HIGH SCHOOL, I
19 ATTENDED A SMALL LIBERAL COLLEGE THAT HAS BEEN KNOWN
20 THROUGHOUT THIS CASE, KNOWN AS BEREA COLLEGE. BUT ONE
21 THING I WOULD SAY ABOUT THIS IS THAT IT WAS PORTRAYED AS
22 JUST SOME LITTLE LIBERAL ARTS COLLEGE, WHICH IS NOT
23 NECESSARILY A CORRECT WAY THAT I WOULD DESCRIBE BEREA
24 COLLEGE. ESPECIALLY A PLACE THAT I WENT TO THAT WAS
25 FOUNDED 1855, IN BEREA KENTUCKY, A COLLEGE THAT IS NOT

1 JUST SOME LIBERAL ARTS COLLEGE IN KENTUCKY, THAT HAS
2 BEEN WITHOUT THROUGHOUT THIS -- THROUGHOUT LITIGATION.
3 BUT IT IS TO BE PORTRAYED TO THIS COURT TODAY IT WAS A
4 COLLEGE THAT HAD APPROXIMATELY 1,500 STUDENTS THAT
5 ALLOWED THE ATTENDANCE FOR THOSE PEOPLE WHO COME FROM A
6 -- FROM LOWER ECONOMIC STATUS. OFFERING EVERY SINGLE
7 STUDENT 100 PERCENT OF STUDENTS THAT WERE ACCEPTED INTO
8 THIS -- INTO THE COLLEGE A FULL RIDE TUITION ALLOWING
9 US, THOSE PEOPLE WHO COME FROM LOWER INCOME, TO HAVE THE
10 SAME OPPORTUNITY THAT THOSE WHO HAVE MORE RESOURCES
11 MIGHT NOT BE ABLE TO ACHIEVE.

12 SO IT IS VERY IMPORTANT TO UNDERSTAND
13 THAT, TO HELP SOLIDIFY THE REASONS WHY LATER ON THAT I
14 WILL LATER DISCUSS AND NOT ONLY THAT, FOR THOSE PEOPLE
15 WHEN IT COMES DOWN TO THIS PARTICULAR SITUATION -- OR
16 SORRY, NOT SITUATION BUT TOPIC HERE, IS THAT THIS
17 COLLEGE WAS SOMETHING THAT WAS MOVING FORWARD, FOUNDED
18 IN 1855, THAT WAS THE FIRST TO EDUCATE RECENTLY ENSLAVED
19 PEOPLE.

20 BLACKS, WHITES, MALES, AND FEMALES, ALL
21 UNDER THE SAME ROOF. SOMETHING THAT WAS NOT HAPPENING
22 THERE. A PLACE WHERE DOCTOR CARTER D. WOODSON, WHO IS
23 LITERALLY THE FOUNDER OF BLACK HISTORY MONTH, GRADUATED
24 FROM. SO I WANTED TO GIVE THIS IMAGE -- THE REASON I AM
25 DOING THAT IS SO THAT WE CAN SEE THE BIGGER PICTURE OF

1 THIS COLLEGE -- OF THIS COLLEGE THAT I WENT TO IS NOT
2 JUST MERELY SOME LITTLE LIBERAL ARTS COLLEGE AND THERE
3 IS NO SIGNIFICANCE THERE WHEN IT ACTUALLY IS.

4 MS. MEW: YOUR HONOR, IF WE CAN PAUSE
5 THERE FOR A MINUTE. I AM CONCERNED THIS IS TURNING INTO
6 ARGUMENT. IT'S -- YOU ARE NOT STATING FACTS YOU ARE
7 EXPLAINING WHY YOU ARE GOING AND I JUST AGAIN --

8 DR. KITCHENS: THESE ARE ALL FACTS.

9 MS. MEW: YOUR HONOR, YOU ARE ON MUTE
10 AGAIN, SIR. YOUR HONOR.

11 THE COURT: SORRY, YOU KNOW HOW IT IS.

12 I THINK THAT OBJECTION IS WELL TAKEN.
13 OBVIOUSLY, YOU KNOW, DR. KITCHENS, I KNOW IT'S IN THE
14 SITUATION WHERE YOU ARE BOTH THE PLAINTIFF AND YOU
15 REPRESENTING YOURSELF THERE IS GOING TO BE SOME OVERLAP
16 AND IN THE END, YOU KNOW, TOMORROW YOU WILL PROBABLY BE
17 DOING A CLOSING STATEMENT. BUT IT'S HELPFUL FOR THE --
18 IT'S HELPFUL FOR ME WHEN TRYING TO ORGANIZE THE FACTUAL
19 CONTENTIONS IN THIS CASE AND SEPARATE THOSE FROM THE
20 LEGAL ARGUMENTS, IT'S HELPFUL TO ME IF YOUR TESTIMONY
21 COULD FOCUS AS MUCH ON A FACTUAL RECOUNTING OF, YOU
22 KNOW -- IT'S EXPERIENCES THAT -- RECOUNTING OF RELEVANT
23 EXPERIENCES THAT YOU HAD, THINGS THAT YOU DID, YOU KNOW,
24 THINGS THAT HAPPENED THINGS YOU SAW, THAT'S THE REAL
25 HEART OF FACT TESTIMONY AND THE MORE YOU CAN FOCUS ON

1 THAT IT WILL USE OUR TIME EFFICIENTLY AND KEEP THE CASE
2 ORGANIZED.

3 DR. KITCHENS: UNDERSTOOD, YOUR HONOR.
4 BY DR. KITCHENS:

5 Q. SO DUE TO THIS BACKGROUND OF GOING TO SUCH A
6 SMALL -- SMALL COLLEGE, AND DUE TO THOSE SMALL CLASS
7 SIZES THROUGHOUT THIS CASE WE -- THESE SMALL CLASS
8 SIZES, MY PROFESSOR, DR. ALYSSA HANNA, WHO WAS ONE OF MY
9 BIOLOGY PROFESSORS NOTICED THAT -- HOW I WAS STRUGGLING
10 TO FINISH MY EXAMS AND QUIZZES --

11 MS. MEW: OBJECTION, YOUR HONOR; LACK OF
12 FOUNDATION.

13 THE COURT: OVERRULED. I UNDERSTAND I
14 THE -- I CAN TELL THE DIFFERENCE BETWEEN THAT TYPE OF
15 THING, THAT'S FINE. OVERRULED.

16 BY DR. KITCHENS:

17 Q. SO SHE NOTICED THAT I HAD FINISHED -- FINISHED
18 MY EXAMS AND QUIZZES IN A TRADITIONAL CLASS THAT I
19 STRUGGLED TO TAKE THESE PARTICULAR EXAMS IN A
20 TRADITIONAL CLASS SETTING. AND SO SHE ALLOWED ME TO SIT
21 IN HER OFFICE DURING OFFICE HOURS AND TAKE THE EXAM
22 UNTIL I WAS FINISHED. I WOULD LIKE TO NOTE FOR THE
23 COURT THAT AT THAT TIME, DR. HANNA WAS NOT CONCERNED ON
24 EXACTLY HOW MUCH TIME IT TOOK FOR ME TO FINISH THE EXAM
25 BUT FOR ME TO ACTUALLY FINISH THE EXAM UNDER A LESS

1 STRESSFUL ENVIRONMENT.

2 THE COLLEGE HAS A STRICT SATISFACTORY
3 ACADEMIC PROGRESS STANDARD THAT WE HAVE THAT ALL
4 STUDENTS THERE HAVE TO -- HAVE TO ADHERE TO. AT THIS
5 TIME, I HAD A -- WELL, THIS -- THIS PARTICULAR LEVEL OF
6 STANDARD HAD TO HAVE A MINIMUM OF A 2.0 G.P.A.

7 ON THE SCREEN NOW I WOULD LIKE TO BRING
8 UP EXHIBIT 4.

9 AND I APOLOGIZE TO COURT FOR --

10 AND THIS HERE IS A DOCUMENT THAT IS A
11 COPY OF MY COLLEGE TRANSCRIPTS FROM BEREA COLLEGE. SO
12 -- YES, SO AS YOU CAN SEE HERE, THAT I HAD A COLLEGE
13 G.P.A AVERAGE OF 2.6 G.P.A, WHERE THE AVERAGE STUDENT AT
14 THE TIME OR AN AVERAGE STUDENT OF BEREA COLLEGE HAD AN
15 AVERAGE GRADE POINT OF 3.54 G.P.A.

16 MS. MEW: OBJECTION; LACK OF FOUNDATION.
17 BY DR. KITCHENS:

18 Q. EVEN WITH ALL OF THE PLANNERS, ALARMS, AND EXTRA
19 TIMES THAT -- AND EXTRA TIMERS AND GIVEN THESE EXTRA
20 ACCOMMODATIONS BY PROFESSORS, I WAS NOT EVEN CLOSE TO
21 BEING THE AVERAGE AMONGST MY PEERS.

22 NOT LONG AFTER THIS, I DECIDED TO GO OVER
23 TO HEALTH SERVICES AND -- SORRY. YOUR HONOR, I THINK
24 THIS IS ALREADY IN THE --

25 MS. MEW: IT'S NOT.

1 DR. KITCHENS: ITS NOT. OKAY. WE CAN
2 REMOVE THIS, PLEASE.

3 AND, YOUR HONOR, I WOULD LIKE TO ENTER
4 THIS DOCUMENT INTO THE RECORD, JX 04?

5 THE COURT: JX 04, MS. MEW?

6 MS. MEW: NO OBJECTION.

7 THE COURT: ADMITTED.

8 (PLAINTIFF JOINT EXHIBIT 4 IS ADMITTED
9 INTO EVIDENCE.)

10 BY DR. KITCHENS:

11 Q. I WOULD NOW LIKE TO BRING UP EXHIBIT 5,
12 PLAINTIFF'S EXHIBIT 5.

13 SO THIS IS A DOCUMENT THAT IS GIVEN THAT
14 WAS WRITTEN -- A PROGRESS NOTE FROM THE BEREA COLLEGE
15 DISABILITY SERVICES, AND MRS. SYNTHIA REID CONDUCTED A
16 DIAGNOSTIC INTERVIEW AND REPORTED SYMPTOMS DATING BACK
17 TO FIRST GRADE. AT THIS TIME WHEN I WENT THERE I WAS
18 EMBARRASSED TO EVEN HAVE THIS -- HAVE A DISABILITY, AND
19 DIDN'T WANT ANYONE TO KNOW THAT I HAD A DISABILITY.

20 SO I WAS AFRAID THAT IF I WAS TO ACCEPT
21 GETTING THESE OFFICIAL ACCOMMODATIONS FROM THE
22 UNIVERSITY, THAT PEOPLE WOULD JUDGE ME ON MY DISABILITY
23 AND WHETHER OR NOT I WOULD BE ABLE TO EVEN ACHIEVE MY
24 GOALS THAT I SET BEFORE MYSELF WITHOUT THOSE
25 DISABILITIES.

1 OR WORSE, THAT THEY WOULD EVEN THINK THAT
2 I WAS NOT, YOU KNOW, THAT SMART OR UNDESERVING, BECAUSE
3 FOR ME THE SHAME AND THE IGNORANCE, NOW THAT I -- IN
4 HINDSIGHT, YOU KNOW, I REFUSED THESE OFFICIAL
5 ACCOMMODATIONS AND INSTEAD DECIDED TO GO THE LESS PUBLIC
6 ATTENTION GRABBING ACCOMMODATIONS, WHICH WAS THE
7 MEDICATION.

8 THIS COURT HAS HEARD FROM OTHER WITNESSES
9 DURING THIS TRIAL EMBARRASSMENT HAS BEEN A COMMON NOTION
10 AMONGST THEM BUT DESPITE MY EFFORTS TO AVOID THIS
11 EMBARRASSMENT, THE NBME WOULD RATHER PUNCH DOWN ON ME
12 AND RELY ON MY IGNORANCE OF THE KNOWLEDGE THAT I NOW
13 HAVE AND TO CLAIM THAT I AM MALINGERING AND DRUG
14 SEEKING.

15 THE COURT: THAT'S -- SORRY TO INTERRUPT.
16 THAT'S A GOOD EXAMPLE OF AN ARGUMENTATIVE POINT THAT
17 DOES NOT NEED TO BE IN YOUR FACT TESTIMONY. LET'S TAKE
18 THIS EXAMPLE, BECAUSE YOU DON'T HAVE TO GIVE FACT
19 TESTIMONY ABOUT WHAT THE NBME THINKS OR DOES.

20 YOU SHOULD GIVE FACT TESTIMONY ABOUT YOUR
21 EXPERIENCE WITH THE NBME AND INSOFAR AS WHAT WAS
22 COMMUNICATED TO YOU, WHAT, WAS SENT TO YOU, ET CETERA.

23 BUT SAVE THE CHARACTERIZATION OF NBME'S
24 ACTIONS FOR YOUR CLOSING ARGUMENT; OKAY?

25 DR. KITCHENS: YES, SIR. SORRY, YOUR

1 HONOR.

2 THE COURT: GO AHEAD.

3 DR. KITCHENS: AND MS. MEW.

4 BY DR. KITCHENS:

5 Q. AT THIS TIME I WOULD LIKE FOR -- ACTUALLY THIS
6 IS ALREADY ENTERED INTO THE RECORD. THANK YOU.

7 SO HERE, I WOULD LIKE TO MAKE SURE THAT I
8 AVOID THAT. YES. IF I CAN PULL UP EXHIBIT 6, PLEASE?

9 MS. MEW: PX OR JX?

10 DR. KITCHENS: I'M SORRY, MS. MEW. PX 6.

11 BY DR. KITCHENS:

12 Q. AND THIS IS A PROGRESS NOTE -- A MEDICAL RECORD
13 FROM THE BEREHA HEALTH SERVICES THAT WAS CONDUCTED IN
14 2013. SO IT WAS CONDUCTED IN 2013 FROM THE DISABILITY
15 SERVICE AND AS WE CAN SEE HERE IT HAS, ADHD WITHOUT
16 HYPER ACTIVITY -- WITHOUT MENTION OF HYPER ACTIVITY, AND
17 DISCUSSING POTENTIALLY PRESCRIBING ADDERALL, AS WE CAN
18 SEE -- AS SEEN IN THE PLANS HERE, AND ORIGINALLY STATING
19 THAT I WAS ON 20 MILLIGRAMS OF ADDERALL WHICH MAY HAVE
20 BEEN -- THAT MAY BE ADJUSTED LATER ON.

21 MS. MEW: OBJECTION, YOUR HONOR. I JUST
22 I THINK IT MISCHARACTERIZES THE DOCUMENT CAN YOU JUST
23 CLARIFY?

24 DR. KITCHENS: YES, ABSOLUTELY.

25 SO THIS IS A PROGRESS NOTE -- NOT A

1 PROGRESS NOTE, BUT IT IS AN OFFICIAL MEDICAL RECORD THAT
2 WAS -- THAT I WENT TO AND WHAT THIS DOCUMENT IS SHOWING
3 IS THAT IN 2013, IT WAS RECOGNIZED THAT -- RECOGNIZED OF
4 A DIAGNOSES OF ATTENTION DEFICIT-HYPERACTIVITY DISORDER,
5 ADHD THERE, AND TO ALSO SHED LIGHT ON THE MILLIGRAMS OF
6 -- OF THE PARTICULAR MEDICATION, WHICH WILL LATER SHOW
7 SOME SIGNIFICANCE THERE.

8 MS. MEW: YOUR HONOR, I THINK HERE IS MY
9 OBJECTION. I HAVE NO PROBLEM WITH THIS EXHIBIT COMING
10 IN TO THE RECORD. AND IF I SUPPOSE THAT DR. KITCHENS
11 WANTS TO READ FROM IT, OR TALK ABOUT WHAT HIS EXPERIENCE
12 WAS WITH IT, HE IS NOT AN EXPERT WITNESS.

13 HE IS NOT -- HE DOES NOT HAVE PERSONAL
14 KNOWLEDGE OF WHAT WAS GOING THROUGH THIS PROVIDER'S
15 MIND. SO YOU KNOW, THERE IS A LACK OF PERSONAL
16 KNOWLEDGE AND FOUNDATION AS YOU HEAR, AND AGAIN WHERE
17 EXPERTS MIGHT BE ABLE TO GIVE SOME OPINION TESTIMONY ON
18 THAT, AGAIN, HE IS NOT TESTIFYING AS AN EXPERT.

19 SO AGAIN I HAVE NO PROBLEM AT ALL WITH
20 THIS DOCUMENT COMING IN, IT SPEAKS FOR ITSELF OR IT SAYS
21 WHAT IT SAYS, I GUESS. BUT JUST HAVE A CONCERN TO THE
22 EXTENT IT GETS RE CHARACTERIZED THROUGH LAY WITNESS
23 TESTIMONY.

24 THE COURT: SURE. WELL SO PX 6 IS
25 ADMITTED, LET ME GET THAT OUT OF THE WAY. AS FOR

1 CHARACTERIZING THE DOCUMENT, YOU KNOW, I'M BECOMING
2 FAMILIAR WITH THIS DOCUMENT IN PARTICULAR AND OTHER ONES
3 AND CERTAINLY I THINK I AM GETTING A VERY GOOD
4 UNDERSTANDING OF DR. KITCHENS AND WHERE HE IS COMING
5 FROM BUT, YOU KNOW, DR. KITCHENS, YOU UNDERSTAND THE
6 OBJECTION THAT IS YOU KNOW YOU ARE NOT AN EXPERT WITNESS
7 IN THIS CASE AND INTERPRETING DOCUMENTS, BUT ON THE
8 OTHER HAND, YOU ARE PERSONALLY FAMILIAR WITH THIS
9 DOCUMENT.

10 IT WILL BE HELPFUL TO ME WHEN YOU ARE
11 TESTIFYING ABOUT A DOCUMENT LIKE THIS WHEN YOU ARE
12 TALKING ABOUT YOUR UNDERSTANDING OF THE DOCUMENT TO ALSO
13 TALK ABOUT WHY YOU HAVE THAT UNDERSTANDING OR HOW YOU
14 GOT IT. THAT ADDITIONAL TESTIMONY IN THE END WILL HELP
15 ME FIGURE OUT WHERE TO ASSIGN WEIGHT; OKAY?

16 THE WITNESS: YES, YOUR HONOR, AND I
17 WOULD LIKE TO TO DO THAT NOW, IF THAT'S OKAY.

18 THE COURT: PLEASE, AT ANY TIME.

19 BY DR. KITCHENS:

20 Q. OKAY. SO WHAT HAPPENS IS -- OH, AND THE REASON
21 ABOUT THIS DOCUMENTATION -- SO WHEN A PATIENT, WHICH AT
22 THIS TIME I WAS A PATIENT OF DR. MARION DAVID, WHEN YOU
23 ARE GOING THROUGH THE INTERVIEW, WHEN YOU ARE IN THAT
24 ONE-ON-ONE IN THE ROOM WITH THAT PHYSICIAN, THEY GO
25 THROUGH EVERY SINGLE STEP WITH YOU.

1 THEY LISTEN TO YOU, THEY TAKE THEIR
2 NOTES, AND THEY GIVE THEIR OBJECTIONS AND THEIR
3 ASSESSMENT FOR IT, AND THEY TELL YOU WHAT THEIR
4 TREATMENT PLAN IS, WHAT THINGS THEY RECOMMEND THAT YOU
5 DO AND IF YOU -- AND IF YOU AGREE TO DO IT, OR IF YOU
6 DECIDE NOT TO ADHERE TO THEIR -- THEIR -- TO THEIR
7 PROFESSIONAL RECOMMENDATION, SO -- AND IF YOU AGREE TO
8 IT, THEN THEY WILL GO AHEAD AND PUT IT INTO THE NOTES
9 WHICH WOULD BE A DOCUMENT SUCH AS THIS.

10 BUT IF YOU ALSO REJECT TO IT, THEY WOULD
11 STILL PUT IT IN WHAT THEIR RECOMMENDATIONS WERE AND THEN
12 ALSO PUT IN NOTE THAT THE PATIENT DECIDED TO REJECT THIS
13 -- THIS TREATMENT PLAN. AND, YOU KNOW, IT IS A COMMON
14 PRACTICE THAT PHYSICIANS DO TO MAKE SURE THAT THEY
15 CLARIFY FOR THEMSELVES SO THAT THEY -- IF THEY EVER ARE
16 TO GO INTO LITIGATION FOR MALPRACTICE OR WHATEVER TYPES
17 OF REASONS, THEY CAN SAY THAT I WENT OVER EVERYTHING IN
18 MY INTERVIEW WITH THE PATIENT AND I RECOMMENDED THIS
19 PARTICULAR MEDICATION AT THIS PARTICULAR DOSAGE FOR
20 VARIOUS REASONS AND THAT PATIENT GAVE A CONSCIOUS
21 DECISION TO DECLINE IT?

22 MS. MEW: YOUR HONOR, I OBJECT TO THAT.
23 AGAIN, I DON'T THINK HE IS TALKING ABOUT WHAT HAPPENED
24 IN HIS CASE FROM HIS PERSONAL KNOWLEDGE. I THINK I
25 UNDERSTAND THAT TESTIMONY TO BE DESCRIBING GENERAL

1 PRACTICES OF SOME PHYSICIANS, WHICH AGAIN, IS NOT WITHIN
2 DR. KITCHENS KNOWLEDGE AND HE IS NOT TESTIFYING AS AN
3 EXPERT AND I THINK, AGAIN, ITS POTENTIALLY
4 MISCHARACTERIZING THE EVIDENCE.

5 DR. KITCHENS: THIS IS WHAT HAPPENS.

6 THE COURT: I UNDERSTAND THE OBJECTION.
7 AND THAT'S FINE. DR. KITCHENS, YOU CAN DO WITH IT AS
8 YOU WISH.

9 DR. KITCHENS: OKAY.

10 BY DR. KITCHENS:

11 Q. SO YES, WE HAVE ALREADY -- WE CAN REMOVE THIS
12 DOCUMENT HERE, PLEASE.

13 AND SO IF WE CAN NOW BRING UP -- LET'S
14 SEE, FOR THE -- FOR THE SAKE OF THE COURT, I WILL MOVE
15 DOWN, OKAY. LET'S SEE HERE. YES. IF I CAN LOOK AT
16 HERE EXHIBIT -- YES. SO IF WE CAN BRING UP -- NO, I'M
17 SORRY. WE WILL LEAVE IT THERE FOR NOW.

18 YES. SO -- LET'S GO AHEAD.

19 SO IN THIS CASE HERE, LET'S LOOK AT THE
20 EXHIBIT PX 9, PLEASE?

21 SO THIS IS ALSO A -- A MEDICAL -- A
22 PROGRESS NOTE AS WELL. I KNOW IT LOOKS VERY FAMILIAR TO
23 US, BUT DIFFERENT DATES ON HERE.

24 AND THIS PARTICULAR DOCUMENT IS SHOWING
25 THAT ON AUGUST THE 5TH -- IF WE CAN SCROLL UP, YES,

1 THANK YOU -- AUGUST THE 5TH, 2013, THE PRESCRIPTION WAS
2 ACTUALLY PRESCRIBED TO ME. AND THAT THE NOTES INDICATED
3 THAT ONCE I PRESCRIBED THE -- THE MEDICATION FOR
4 ADDERALL AND WANTED TO MAKE SURE THAT I COULD -- THAT I
5 WANTED IT BACK, SO -- MEANING THIS PARTICULAR
6 MEDICATION.

7 AS WE CAN SEE HERE, ON THE DOCUMENT, WE
8 SEE THAT WE HAVE SUBJECTIVE, OBJECTIVE, ASSESSMENT, AND
9 THE PLAN. AND FOR DR. DAVID HERE, HE HAS IN THIS -- FOR
10 THE SUBJECTIVE SHOWING THAT WHERE I WAS APPLYING -- I
11 WAS APPLYING FOR MEDICAL SCHOOL AND I WAS GETTING READY
12 TO TAKE THE MCAT, AND THINKS THIS WILL HELP HIM FOCUS ON
13 HIS FUTURE. HE SAW SYNTHIA REID, R IS FOR -- WELL,
14 OKAY, SYNTHIA R., LAST SEMESTER, WHO CONCURRED THAT HE
15 DOES HAVE ADD DURING THAT EVALUATION, THAT'S WHAT THEY
16 ARE SAYING HERE.

17 HAS NO EXPLANATION WHY DIDN'T USE IT IN
18 THE PAST. DOES NOT SMOKE OR USE ELICIT DRUGS. HERE, SO
19 THE REASON THAT I AM USING THIS PARTICULAR DOCUMENT HERE
20 IS TO SHOW THE SIGNIFICANCE OF -- THAT AN EVALUATION WAS
21 CONDUCTED THERE.

22 AND ALSO, THAT THE ASSESSMENT HERE, AS IT
23 SAYS THAT ATTENTION DEFICIT DISORDER WITHOUT MENTIONING
24 OF HYPERACTIVITY DISORDER ALSO. JUST RE SOLIDIFYING
25 THAT.

1 AND I WOULD LIKE TO ENTER THIS DOCUMENT
2 INTO THE RECORD, PX 09.

3 MS. MEW: NO OBJECTION.

4 THE COURT: ADMITTED.

5 (PLAINTIFF EXHIBIT 09 IS ADMITTED INTO
6 EVIDENCE.)

7 DR. KITCHENS: OKAY. AND LET'S SEE HERE.
8 IF WE CAN PULL UP ON EXHIBIT PX 11, PLEASE?
9 BY DR. KITCHENS:

10 Q. RIGHT. SO THIS IS ALSO ANOTHER NOTE FROM
11 ANOTHER -- ANOTHER MEDICAL RECORD FROM THE BEREA COLLEGE
12 HEALTH SERVICES, CONDUCTED ON NOW THE -- ON MARCH 20TH,
13 2014, WHICH ALSO SHOWS HERE IT STATES, SUMMARY OF NOTE,
14 ATTENTION DEFICIT DISORDER, WITHOUT MENTIONING OF HYPER
15 ACTIVITY.

16 IF WE SCROLL DOWN HERE WE ARE LOOKING AT
17 THE SUBJECT -- I'M SORRY, IF YOU CAN GO BACK UP JUST
18 LITTLE BIT?

19 JUST TO RE SOLIDIFY HERE OF THE -- WHAT
20 HE STATES, SUBJECTIVE, THAT -- THAT I CAME TO HER THAT
21 SEVERAL -- SEVERAL FOLKS THINKS HE MIGHT HAVE DIABETES
22 OR THAT HE HAS HYPERGLYCEMIA, ET CETERA. THE REASON
23 THIS DOCUMENT IS -- IT SHOWS IMPORTANCE IS BECAUSE EVEN
24 THOUGH I CAME IN TO RECOGNIZE -- RECOGNIZE FOR MY
25 CONCERN OF THE DIABETES AND THINGS OF THAT NATURE

1 BECAUSE I WAS CONCERNED FOR WHAT PEOPLE IN MY FAMILY, IT
2 ALSO RECOGNIZED, AGAIN, MY ACTIVE DIAGNOSES THAT WAS
3 WRITTEN THERE ON A DIFFERENT OCCASION AND THAT
4 MEDICATION.

5 AND AT THIS TIME I WOULD LIKE TO ASK,
6 YOUR HONOR, IF I MAY ENTER THIS EXHIBIT INTO THE RECORD,
7 EXHIBIT NUMBER 11?

8 MS. MEW: NO OBJECTION. I DO OBJECT TO
9 THE TESTIMONY THAT WAS ARGUMENTATIVE AND OPINION.

10 THE COURT: PX 11 IS ADMITTED.

11 (PLAINTIFF EXHIBIT 11 IS ADMITTED INTO
12 EVIDENCE.)

13 BY DR. KITCHENS:

14 Q. OKAY. ALL RIGHT.

15 SO AS AFTER THAT, I WAS GETTING READY TO
16 TRAVEL, AND THINGS OF THAT NATURE.

17 AND IF WE CAN LOOK AT -- ACTUALLY, I WILL
18 -- I AM GOING TO ACTUALLY OVERLOOK THAT ONE THERE, BUT
19 WHEN I WAS IN -- I WAS GETTING READY TO TRAVEL, I WAS
20 GOING ABROAD AND I WAS GETTING READY TO GO TO -- WHAT
21 WAS IT -- TO -- YES, I WAS GETTING READY TO GO ABROAD
22 AND -- FOR MEDICAL SCHOOL.

23 AND I WANTED TO MAKE SURE THAT I WOULD BE
24 ABLE TO GET MY -- GET OFFICIAL MEDICATIONS AND THOSE
25 SUCH THINGS FOR WHEN I DO EVENTUALLY GO OFF TO MEDICAL

1 SCHOOL BUT LATER TO FIND OUT THESE PARTICULAR
2 MEDICATIONS WAS NOT EVEN LEGAL IN THE COUNTRY OF POLAND,
3 OF WHERE I WENT TO MEDICAL SCHOOL AT THE MEDICAL
4 UNIVERSITY OF LUBLIN.

5 AND WHAT HAPPENED WAS THEN, WHEN I CAME
6 BACK DURING THAT SUMMER, I NEEDED TO ASK MY DOCTOR IF
7 SHE WOULD WRITE A PARTICULAR -- YES, IF SHE WOULD WRITE
8 MY PRESCRIPTION FOR ME, WHICH AT THAT TIME SHE DID NOT
9 FEEL COMFORTABLE DOING THAT, JUST BECAUSE SHE NOTICED
10 THAT I WAS -- I WENT AN EXTENDED AMOUNT OF TIME WITHOUT
11 TAKING THE MEDICATION.

12 EVEN THOUGH SHE WAS THE PERSON WHO WROTE
13 THE MEDICATION AT THE BEGINNING ANYWAY, DR. DAVID. AND
14 SO AT THAT TIME, WHAT SHE DECIDED TO DO WAS SHE REFERRED
15 ME OUT TO A -- TO HAVE ANOTHER THIRD-PARTY -- OR, SHE
16 REFERRED ME OUT TO A PSYCHIATRIST, TO RE EVALUATE ME AND
17 TO RECONFIRM THOSE PARTICULAR DIAGNOSES OF ADHD, AND
18 WHAT SHE DID.

19 AND THE JUSTIFICATION OF HER ACTUALLY
20 CONDUCTING THAT EVALUATION WAS DR. DAVID LATER, A COUPLE
21 OF DAYS LATER, DECIDED TO WRITE THE PRESCRIPTION. SO
22 SHE FIRST DID NOT FEEL COMFORTABLE, HAD IT IN THE NOTES
23 OF THE REFERRAL, AND THEN SHE DID PRESCRIBE THE
24 MEDICATION. SO THAT PARTICULAR -- THAT PSYCHIATRIST
25 CONFIRMED IT AS WELL.

1 THE COURT: DR. KITCHENS, SORRY TO
2 INTERPOSE. ONE OF THE THINGS THAT WOULD HELP ME
3 UNDERSTAND YOUR TESTIMONY, NOT ALWAYS BUT SOMETIMES, IS
4 THE YOU IMAGINE ME ASKING YOU THE FOLLOW-UP QUESTION,
5 HOW DO YOU KNOW THAT?

6 SO IF YOU HAVE -- IF YOU FIND YOURSELF
7 TESTIFYING ABOUT SOMETHING WHERE YOU THINK IT MIGHT BE
8 HELPFUL TO EXPLAIN HOW I KNOW THIS, YOU SHOULD ALWAYS DO
9 THAT FOR ME; OKAY?

10 DR. KITCHENS: YES, SIR. I WAS TRYING TO
11 NOT TO BURDEN THE COURT WITH ALL OF THE MEDICAL RECORDS,
12 I'M SO SORRY.

13 THE COURT: WELL, JUST SO I UNDERSTAND
14 YOUR PERSPECTIVE, BECAUSE A LOT -- SOME OF THE
15 OBJECTIONS THAT HAVE BEEN MADE, PART OF WHAT IS BEHIND
16 THE OBJECTION IS THE QUESTION OF WELL, IS THIS COMING
17 FROM PERSONAL KNOWLEDGE OR IS IT COMING FROM AN
18 UNDERSTANDING THAT CAME FROM SOMEWHERE ELSE.

19 AND SO IT'S ALWAYS, NOT ALL THE TIME, BUT
20 SOMETIMES IT IS IF -- IT'S GOING GO TO BE HELPFUL FOR ME
21 IN INTERPRETING THIS RECORD AND UNDERSTANDING YOUR
22 TESTIMONY, THE MORE I UNDERSTAND ABOUT HOW YOU CAME TO
23 HAVE KNOWLEDGE IT'S GOING TO BE HELPFUL.

24 DR. KITCHENS: OKAY. YES, SIR, YOUR
25 HONOR.

1 LET'S SEE. CAN WE PULL UP PLAINTIFF'S
2 EXHIBIT 16, PLEASE? AND ZOOM IN, PLEASE?

3 SO WHAT THIS IS DOCUMENT IS SHOWING HERE
4 IS, IT IS A MEDICAL RECORD FROM WHITE HOUSE CLINICS, ON
5 FEBRUARY THE 16TH, 2000 -- SORRY, FEBRUARY 15TH, 2016,
6 THERE.

7 AND THIS EXPERIENCE HERE THAT I HAD WAS
8 WHEN I, AS I WAS JUST EXPLAINING THAT I WENT OVER TO
9 SCHOOL AND SHE WAS NOT FEELING AS COMFORTABLE WRITING
10 THIS PARTICULAR MEDICATION, WHICH SHE DID TELL TELL ME
11 THESE PARTICULAR REASONS WHY SHE DID WANT TO WRITE THIS
12 -- THIS PARTICULAR MEDICATION HERE.

13 IF WE CAN SCROLL UP, PLEASE? THANK YOU.

14 YOUR HONOR, I WOULD LIKE TO -- ACTUALLY,
15 FOR THIS ONE, WE DON'T HAVE TO HAVE THIS ONE GO INTO THE
16 RECORD.

17 LET'S SEE HERE. RIGHT. IF WE COULD LOOK
18 AT --

19 SO, WHILE I WAS IN -- WHEN I DECIDED TO
20 -- WHEN I WAS IN COLLEGE, I DECIDED TO GO AHEAD AND LOOK
21 AT DIFFERENT ASPECTS OF WAYS THAT WOULD HELP ME MITIGATE
22 MY SYMPTOMS OF ADHD, TO HELP ME MAKE IT THROUGH -- MAKE
23 IT THROUGH MY SCHOOLING.

24 SO THROUGHOUT MY FIRST TWO YEARS OF
25 MEDICAL SCHOOL, I WAS LEFT TO PURCHASE OVER THE COUNTER

1 SUPPLEMENTS TO MAKE UP FOR HAVING MY ACTUAL
2 PRESCRIPTION, AS HAS BEEN SHOWN THROUGHOUT THE TRIAL.

3 I WILL, IF I COULD, PULL UP EXHIBIT 5?

4 SORRY, JOINT EXHIBIT 5. SCROLL THROUGH.

5 THIS IS A DOCUMENT OF MY MEDICAL SCHOOL
6 TRANSCRIPT. DATED BACK ON JANUARY 8, 2021, THIS IS WHEN
7 I GRADUATED FROM THE MEDICAL UNIVERSITY OF LUBLIN.

8 SO WHEN I WAS -- WHEN I WAS IN CLASS, IT
9 WAS REALLY HARD FOR ME TO BE ABLE TO FOCUS ON THE
10 MATERIAL THAT WAS GIVEN TO ME, ESPECIALLY WHEN IT --
11 MORE SPECIFICALLY, ON TAKING THESE PARTICULAR
12 EXAMINATIONS. NOW, WHEN I WAS IN SCHOOL, DID I HAVE THE
13 OFFICIAL ACCOMMODATIONS THAT COUNT THROUGH THE
14 UNIVERSITY DURING MY CLASS WORK? NO, BECAUSE IT WASN'T
15 NECESSARILY NEEDED AT THAT TIME.

16 WHEN WE ARE LOOKING AT MY -- MY GRADES
17 HERE, IT REFLECTS THAT ALL OF THESE COURSES ARE WHAT WE
18 CONSIDER -- SO IN MEDICAL SCHOOL YOU HAVE TWO SECTIONS
19 OF IT. YOU HAVE YOUR -- YOUR BASIC SCIENCES, WHICH IS
20 ALL CLASSROOM, AND THEN YOU HAVE YOUR CLINICAL
21 ROTATIONS, WHICH IS WHEN YOU ARE UTILIZING THOSE THINGS
22 THAT YOU LEARNED YOUR FIRST TWO YEARS IN THE CLINICAL
23 SETTING.

24 AND WE CAN SEE -- AS WE SEE HERE, MY
25 GRADES WERE, YOU KNOW, A PASS OR C, AND MAJORITY OF THEM

1 ARE CS. IF WE CAN SCROLL DOWN, THERE IS EVEN ONE HERE
2 AS WE CAN SEE -- SORRY BIOCHEMISTRY AND MOLECULAR
3 BIOLOGY II. I FAILED THAT PARTICULAR COURSE. IT WAS
4 NOT DUE TO LACK OF TRYING, BUT I JUST COULD NOT PASS THE
5 EXAM.

6 BUT IT'S VERY -- IT SHOULD BE NOTED THAT
7 AT MY UNIVERSITY WE WAS NOT -- ALL OF OUR CLASS WORK
8 THAT WE DID, IT WAS -- YOUR GRADE, YOUR FINAL, GRADE WAS
9 NOT BASED UPON YOUR CUMULATIVE AVERAGES OF EXAMS, AND
10 HOMEWORK ASSIGNMENTS, ATTENDANCE, AND THOSE SUCH THINGS.
11 THOSE MEANT NOTHING. THE ONLY THING THAT MATTERED WAS
12 THE FINAL -- THE FINAL THAT THE PROFESSORS GAVE AND IF
13 YOU FAILED THAT FINAL, OUT OF THE THREE ATTEMPTS THAT
14 YOU ARE GIVEN, THEN THEN YOU WILL NOT PASS THE CLASS.

15 AND SO THIS IS A REPRESENTATION THAT I
16 WAS NOT ABLE TO UTILIZE THOSE KEY THINGS THAT -- THOSE
17 TYPE OF MITIGATING ACCOMMODATIONS THAT I -- THAT I HAD
18 IN PLACE FOR MYSELF THERE. AND REPEATED THE COURSE AND
19 THE SECOND TIME I -- IF WE CAN SCROLL DOWN -- I TOOK THE
20 COURSE -- RIGHT HERE, PLEASE.

21 YES. WE CAN SEE THAT I PASSED THE CLASS
22 WITH A C. AND IT SHOULD BE NOTED THAT THERE IS NO
23 PASSING SCORE BELOW A C, SO YOU WON'T SEE D'S ON THIS
24 PARTICULAR TRANSCRIPT.

25 AND IF WE CAN SCROLL DOWN SOME MORE, WE

1 CAN SHOW -- THIS DOCUMENT HERE -- YES, PLEASE KEEP
2 SCROLLING PLEASE, YES, TO MY CLINICALS HERE.

3 THESE CLINICAL GRADES IS WHAT I HAVE --
4 WHEN I WAS IN CLASSES, HORRIBLE AT TEST TAKING, HORRIBLE
5 AT PAYING ATTENTION AND BEING ABLE TO CONCENTRATE ON MY
6 CONCENTRATION DURING THESE PARTICULAR EXAMINATIONS, BUT
7 THEN WHEN I WAS ACTUALLY IN CLINICAL ROTATIONS IT WAS
8 ABLE TO REFLECT MY KNOWLEDGE THAT I HAD FROM ALL OF
9 THOSE COURSES THAT CAN BE SHOWN HERE, OUT OF MY GRADES
10 HERE.

11 AS WE CAN SEE, IT SAYS FOR FAMILY -- IT
12 SAYS COURSE TITLE, FAMILY MEDICINE, THAT I GOT AN A.
13 PSYCHIATRY A, INTERNAL MEDICINE A, AND GOING DOWN THE
14 LINE HERE BECAUSE THESE GRADES HERE ARE NOT BASED UPON
15 YOUR -- YOU SITTING DOWN AT A DESK AND TAKING A HIGH
16 STAKES EXAMINATION, BUT YET HOW YOU USE THAT INFORMATION
17 THAT YOU HAVE LEARNED AND NOW BEEN ABLE TO UTILIZE THAT.

18 AND WITH THAT BEING SAID, I WOULD LIKE TO
19 ENTER THIS DOCUMENT INTO THE RECORD, JX 5.

20 MS. MEW: NO OBJECTION.

21 THE COURT: JX 5 IS ADMITTED.

22 (PLAINTIFF JOINT EXHIBIT 5 IS ADMITTED
23 INTO EVIDENCE.)

24 BY DR. KITCHENS:

25 Q. AND WHILE I HAVE WENT THROUGH MEDICAL SCHOOL

1 WITHOUT THESE OFFICIAL ACCOMMODATIONS DURING CLASSROOM
2 TIMES, IT WASN'T NECESSARILY NEEDED. AGAIN, BECAUSE IN
3 MY CLASS ALONE -- AND -- IN MY GRADUATING CLASS, IT WAS
4 ONLY 21 OF US IN THE CLASS.

5 NOT ONLY THAT, SO WE HAD THAT ONE-ON-ONE
6 INTERACTION WITH OUR PROFESSORS, SMALL CLASSROOM
7 ENVIRONMENT. AND WE ALSO GOT THREE DIFFERENT CHANCES TO
8 TAKE AN EXAMINATION. WELL, IN MY CLASS THE MAJORITY OF
9 THE PEOPLE PASSED THEIR EXAM ON THE FIRST AND SECOND
10 TIME. WHEREAS MYSELF, MADE IT TO THE THIRD ROUND
11 UNFORTUNATELY. BUT WHAT DID THAT DO -- WHAT THAT DID
12 WAS IT ALLOWED ME TO HAVE A MORE -- LESS DISTRACTING
13 ENVIRONMENT, MEANING LESS PEOPLE IN THE CLASSROOM OR THE
14 TESTING ROOM.

15 I HAD ACCESS TO THE PROFESSOR WHO WAS
16 ALWAYS STANDING RIGHT THERE TO ANSWER THOSE QUESTIONS
17 AND TO BE ABLE TO HELP IN A MORE INCLUSIVE WAY THAN SHE
18 COULD IF SHE HAD EVERYONE IN THE CLASSROOM. AND NOT
19 ONLY THAT, BECAUSE OF THAT SMALL CLASSROOM SIZE AND THAT
20 TYPE OF ATMOSPHERE THAT THE PROFESSORS HAD WITH THEIR
21 STUDENTS, THEY WANTED TO SEE US SUCCEED.

22 THEY WANTED TO SEE US SUCCEED, WHICH I
23 THINK IT'S SAFE TO SAY THAT MOST PROFESSORS WANT TO SEE
24 THEIR STUDENTS SUCCEED. SO THEY -- THE PROFESSORS WOULD
25 ALLOW US TO HAVE, YOU KNOW, THOSE EXTRA TIME TO TAKE THE

1 EXAMINATION.

2 IF I CAN, I'M GOING -- FOR TIME SAKE, I
3 AM GOING TO MOVE ON FORWARD WITH THIS.

4 WHEN I WAS APPLYING FOR THE CBSA OR THE
5 CBSE, SORRY -- IF WE CAN BRING UP PLAINTIFF'S
6 EXHIBIT 52, PLEASE?

7 I'M SORRY, CAN YOU TAKE THAT ONE DOWN?

8 YES. THANK YOU.

9 THE COURT: DR. KITCHENS, BEFORE YOU MOVE
10 TO THE -- BEFORE YOU ARE JUST GUESSING FROM THE EXHIBIT
11 MAYBE WHAT DIRECTION YOU ARE GOING NEXT, CAN YOU LAY A
12 LITTLE GROUNDWORK FOR ME AND EXPLAIN TO ME THE DIFFERENT
13 -- HOW IT WAS -- YOUR EXPERIENCING GO TO INTERNATIONAL
14 MEDICAL SCHOOL, WHAT THE DIFFERENCE IS AS FAR AS THE
15 TEST TAKING, NBME TEST TAKING SCHEDULE.

16 WHAT WERE YOUR EXPECTATIONS OR
17 UNDERSTANDING ABOUT WHEN YOU WERE GOING TO TAKE TESTS
18 AND WHAT THEY WERE, GIVEN YOU WERE GOING TO
19 INTERNATIONAL MEDICAL SCHOOL? JUST A LITTLE INTRO FOR
20 ME.

21 DR. KITCHENS: YES, SIR.

22 BY DR. KITCHENS:

23 Q. SO IT IS -- IT IS COMMON PRACTICE THAT STUDENTS
24 ARE REQUIRED TO TAKE THEIR EXAM -- THEIR STEP
25 EXAMINATION AFTER -- THE STEP 1 EXAMINATION AFTER THEIR

1 SECOND YEAR OF MEDICAL SCHOOL.

2 AND THEN THEY ARE EXPECTED TO TAKE THEIR
3 STEP 2 EXAMINATION PRIOR TO GRADUATION. THAT WAY, WHEN
4 APPLYING TO RESIDENCY PROGRAMS -- BECAUSE IT IS A COMMON
5 FACT -- OR COMMON KNOWLEDGE THAT RESIDENCY PROGRAMS WILL
6 NOT ACCEPT YOU IF YOU DON'T HAVE THOSE SCORES IN AT THAT
7 TIME.

8 THE COURT: AND IS THAT -- IS WHAT YOU
9 JUST SAID TRUE FOR INTERNATIONAL MEDICAL SCHOOL AS WELL
10 AS DOMESTIC U.S.?

11 DR. KITCHENS: NO, SIR, THAT IS NOT.

12 BY DR. KITCHENS:

13 Q. SO -- AND THAT PART THERE, FOR MY PARTICULAR
14 SCHOOL, IS THAT THEY DO NOT REQUIRE A DEADLINE FOR YOU
15 TO TAKE STEP 1 OR STEP 2 BEFORE GRADUATION.

16 THE COURT: OKAY. THAT'S -- THAT WAS THE
17 CONTEXT I WAS LOOKING FOR. THANK YOU, GO AHEAD.

18 DR. KITCHENS: THANK YOU, YOUR HONOR.

19 BY DR. KITCHENS:

20 Q. AND WHAT MY SCHOOL -- AND SO BEFORE TAKING THE
21 U.S.M.L.E. STEP EXAMINATION, BECAUSE EVERY UNIVERSITY --
22 EVERYBODY KNOWS HOW -- YOU KNOW, HOW -- AND I KNEW
23 SPECIFICALLY HOW IMPORTANT THE U.S.M.L.E. STEP
24 EXAMINATIONS ARE, THE UNIVERSITIES WILL NOT -- IF YOU
25 ARE STILL A STUDENT -- LET ME GO BACK.

1 IF YOU ARE STILL A STUDENT, THE SCHOOL
2 HAS TO GIVE YOU PERMISSION TO EVEN TAKE THE U.S.M.L.E.
3 -- ANY STEP, ANY PART OF THE STEP EXAMINATION.

4 SO THEY WOULD HAVE TO GIVE YOU THAT
5 PERMISSION, AND BY THEM GIVING YOU THAT READINESS, TO
6 KNOW WHETHER OR NOT YOU ARE READY FOR -- TO TAKE THAT
7 U.S.M.L.E., THEY WILL HAVE YOU TAKE THE CBSE
8 EXAMINATION. AND BECAUSE IT IS VERY -- IT'S SUCH A
9 REPUTABLE SOURCE TO INDICATE -- OR TOOL, I SHOULD SAY,
10 TO INDICATE THE PROBABILITY OF A PERSON PASSING THE
11 U.S.M.L.E., ANY PART OF IT, THEY USE THAT AS A FOUNDING
12 FACTOR THERE.

13 AND IT SHOULD BE NOTED THAT I KNEW -- IF
14 WE CAN SEE ON -- LET'S SEE IF IT'S -- YES. ON CBSE'S --
15 SO PLAINTIFF'S EXHIBIT 52, PLEASE? SCROLL UP? THANK
16 YOU. IF YOU CAN ZOOM IN ON THIS?

17 SO THIS HERE IS A -- IS THE CBSE THAT WAS
18 ORDERED THROUGH THE UNIVERSITY TO EXTERNAL ENTITIES, TO
19 THE NBME, AS WE CAN SEE HERE AT THE TOP OF THE PAGE, AND
20 IT ALSO SHOWS HERE MY STUDENT I.D. NUMBER, AND ALSO MY
21 NAME AND THE UNIVERSITY.

22 THIS IS -- THE REASON I POINT THIS OUT IS
23 THAT ON -- IF YOU TAKE A CBSE AT HOME YOU DON'T HAVE --
24 THOSE TYPE OF THINGS THERE WILL NOT NECESSARILY BE
25 PRESENT. AND THIS IS A FAILED SCORE. A FAILED CBSE

1 SCORE THAT WAS ON DECEMBER THE 10TH, 2020.

2 AND AS YOU CAN SEE BELOW, YES. YOU CAN
3 SEE WHERE THIS TEST FALLS WITHIN WHAT THE LOWEST
4 THRESHOLD IS OF THE 194, WHICH IS THE LOWEST SCORE YOU
5 CAN GET TO BE ABLE TO PASS THIS AND FOR THE UNIVERSITY
6 TO SAY YES, I APPROVE YOU, YOU MAY NOW TAKE THE
7 U.S.M.L.E. EXAMINATION.

8 BUT IT IS KEY TO UNDERSTAND THAT WHEN I
9 TOOK THIS EXAMINATION, THERE WAS SO MANY DIFFERENT
10 EXTERNAL STRESSORS THAT WAS GOING ON, WE WERE JUST NOW
11 GETTING READY TO GRADUATE, MY WIFE AND I -- SHE WAS
12 GETTING READY TO GRADUATE FROM LAW SCHOOL AND WE HAD SO
13 MUCH FAMILY AND FRIENDS AT OUR HOME, SO WHEN I TOOK
14 THIS EXAMINATION I ALREADY KNEW THAT THIS DOES NOT COUNT
15 AGAINST ME OR PENALIZE ME, EVER.

16 IT DOES NOT PENALIZE ME THROUGH THE
17 UNIVERSITY, IT DOES NOT FOLLOW ME THROUGH -- THROUGHOUT
18 THE UNIVERSITY, IT DOES NOT FOLLOW ME ON MY U.S.M.L.E.
19 TRANSCRIPT SO RESIDENCY PROGRAMS WOULD NOT SEE THIS.

20 AND SO -- AND THIS EXAM IS ALSO -- IT
21 ONLY COST LIKE \$60 FOR US TO TAKE VERSUS THE U.S.M.L.E.
22 EXAMINATION FOR ME, WHICH IS \$1,000. SO A HUGE
23 DIFFERENCE THERE. AND WITH THE OTHER THINGS THIS, FOR
24 ME AT THAT TIME, WAS NOT A PRIORITY. SO I WENT AHEAD
25 AND MADE SURE, I WAS LIKE LET ME JUST TAKE -- NOT TAKE

1 MY TIME, GET THROUGH IT, AND MOVE ON.

2 IT IS ALSO TO BE SAID THAT, IF WE CAN
3 SCROLL BACK UP TO THE TOP, PLEASE?

4 THAT WITH THIS BEING -- THAT I TOOK THIS
5 PARTICULAR EXAMINATION WITH OFFICIAL ACCOMMODATIONS
6 GIVEN TO ME BY THE UNIVERSITY. THIS DOCUMENT HERE, THIS
7 EXAM, THIS SCORE, REPRESENTS -- AND I EXPLAINED THIS
8 EVEN IN MY DEPOSITION WHEN IT WAS BROUGHT UP TO ME, THAT
9 I DID HAVE THOSE OFFICIAL ACCOMMODATIONS FROM THE
10 UNIVERSITY TO ON THIS PARTICULAR HIGH STAKES
11 EXAMINATION.

12 AND AT THIS TIME I WOULD LIKE TO -- ARE
13 WE IN THE WRONG ONE. SORRY, HERE IT IS.

14 YOUR HONOR, JUST FOR CLARIFICATION TO
15 PROVE THAT, BECAUSE IT WAS NOT NECESSARILY ON THAT
16 DOCUMENT, THIS IS THAT SAME -- AS YOU CAN SEE
17 DECEMBER 10, 2020, THIS SAME EXACT EXAM FOR THE CBSE.

18 THE COURT: COULD YOU, FOR THE RECORD,
19 COULD YOU TELL US THE PAGE AND EXHIBIT NUMBER THAT YOU
20 ARE LOOKING AT?

21 DR. KITCHENS: YES, SIR. SORRY, YOUR
22 HONOR. THIS IS PX 02. PX -- AND PAGE NUMBER, WE CAN
23 LOOK HERE, BATES STAMP KITCHENS 1055.

24 THE COURT: THANK YOU.

25 DR. KITCHENS: THANK YOU, YOUR HONOR.

1 BY DR. KITCHENS:

2 Q. SO THIS EXAMINATION, THIS IS A CONFIRMATION FROM
3 THE PROMETRIC CENTER, WHICH IS A PLACE WHERE THEY HAVE A
4 VERY KNOWN REPUTABLE REPRESENTATION FOR HAVING A VERY
5 SECURE LOCATION WHEN TAKING SUCH HIGH STAKES
6 EXAMINATION.

7 AND SO THIS -- THE UNIVERSITY HAS TO
8 APPROVE FOR ME TO BE ABLE TO HAVE EXTENDED TIME. AND IT
9 IS TO BE NOTED THAT WHAT THIS MEANS ON THAT EXTENDED
10 TIME, BECAUSE YOU DON'T HAVE -- THEY DON'T GIVE YOU THE
11 OPTION TO SAY, DO YOU REQUEST -- UNLIKE THE U.S.M.L.E.,
12 I DIDN'T HAVE THE OPTION TO SAY I WANT 25 PERCENT MORE
13 TIME OVER TWO DAYS, OR 50 PERCENT MORE TIME OVER TWO
14 DAYS OR 100 PERCENT OF TIME.

15 YOU AUTOMATICALLY ARE GIVEN THIS, YOU
16 KNOW, ACROSS THE BOARD 100 PERCENT OF TIME OVER THAT ONE
17 DAY. SO JUST FOR THE RECORD THAT IS WHAT THAT MEANS
18 THERE. THIS WAS NO OTHER OPTIONS. IT WAS 100 PERCENT
19 OR NOTHING.

20 AND I WOULD LIKE TO PUT INTO THE RECORD
21 BOTH DOCUMENTS PX -- OKAY -- PX 52 -- PX 52. AND I
22 THINK --

23 MS. MEW: NO OBJECTION.

24 THE COURT: OKAY. PX 52 IS ADMITTED.

25 (PLAINTIFF EXHIBIT 52 IS ADMITTED INTO

1 EVIDENCE.)

2 DR. KITCHENS: OKAY, THANK YOU.

3 BY DR. KITCHENS:

4 Q. AND SO WHEN I -- AFTER THAT, WE CAME BACK HOME
5 -- SO WE MOVED BACK HOME, AND -- WELL, BACK TO KENTUCKY,
6 WHERE WE ORIGINALLY LIVED AND THAT'S WHEN I REALLY
7 STARTED LEANING IN ON -- ON MY STUDIES REALLY HARD THERE
8 BECAUSE I KNEW THAT NOW THAT I HAD GRADUATED I NEED TO
9 GET THESE EXAMS TAKEN CARE OF AND OUT OF THE WAY AS SOON
10 AS POSSIBLE.

11 AND ESTABLISHED -- I WENT TO BAPTIST
12 HEALTH AT THAT, TIME WHICH MY DOCTOR WAS DR. ANDREW YIN,
13 AND IF WE CAN PULL UP EXHIBIT NUMBER 19?

14 MS. MEW: IS IT PX 19?

15 DR. KITCHENS: YES, I'M SO SORRY, MS.

16 MEW. PX 19.

17 MS. MEW: I AM JUST KEEPING THE RECORD
18 CLEAN.

19 DR. KITCHENS: THANK YOU.

20 ALL RIGHT. ALL RIGHT.

21 BY DR. KITCHENS:

22 Q. YEAH, SO THIS IS A RECORD, AS WE CAN SEE HERE --
23 IF WE CAN ZOOM IN A LITTLE BIT MORE, PLEASE. YES.

24 SO IT HAS MY NAME HERE AT THE TOP. IT IS
25 A MEDICAL RECORD FROM -- AT BAPTIST HEALTH, WITH THEIR

1 NUMBER THERE, AND ALSO INSTRUCTIONS FROM -- IT SAYS HERE
2 DR. YIN, M.D., AND AT THIS TIME HERE, WHEN I FIRST CAME
3 BACK TO KENTUCKY AND MADE SURE THAT I ESTABLISHED
4 MEDICAL CARE HERE BECAUSE I KNEW I WOULD NEED MY
5 MEDICATION FOR MY DIAGNOSES -- MY -- FOR ADHD AND FOR MY
6 ANXIETY, DR. YIN LOOKED AT IT AND LOOKED AT MY RECORDS
7 BECAUSE I SUPPLIED HIM WITH ALL OF MY DOCUMENTATION, ALL
8 OF MY MEDICAL RECORDS THAT I HAVE HAD IN MY POSSESSION,
9 I SUPPLIED HIM WITH THOSE.

10 AND WHAT HE NOTE NOTICED WAS THAT WITH
11 THE BUSPIRONE, AS WE CAN SEE HERE AND IT HAS ALREADY
12 BEEN PUT INTO THE RECORD AND TESTIFIED BEFORE NOW, THAT
13 HE STOPPED ME ON THE BUSPIRONE BECAUSE HE DID NOT FEEL
14 THAT IT WAS ADEQUATELY TREATING ME AND HE FELT THAT THE
15 PROPRANOLOL WOULD BE MORE EFFICIENT AND MORE HELPFUL FOR
16 MY GENERALIZED ANXIETY, DIAGNOSES OF THAT, AND HE WENT
17 AHEAD AND ALSO FILLED -- HE REFILLED MY MEDICATION FOR
18 THE ADDERALL AND PROPRANOLOL, WHICH WE CAN SEE -- SORRY
19 IF YOU CAN GO UP JUST A LITTLE BIT, YES, RIGHT THERE.
20 YES. HERE -- HE HAS BOTH, AND I WOULD LIKE?

21 MS. MEW: JUST LODGING AN OBJECTION ON
22 THE -- AGAIN, THE TESTIMONY OF WHAT DR. YIN WAS THINKING
23 AND THE REASONS FOR HIS ACTIONS.

24 DR. KITCHENS: I WOULD LIKE FOR THIS
25 EXHIBIT TO BE PUT INTO THE RECORD, PX 19, PLEASE?

1 MS. MEW: NO OBJECTIONS.

2 THE COURT: PX 19 ADMITTED.

3 (PLAINTIFF EXHIBIT 19 IS ADMITTED INTO
4 EVIDENCE.)

5 DR. KITCHENS: THANK YOU.

6 BY DR. KITCHENS:

7 Q. SO WHEN I STARTED TO APPLY -- SORRY.

8 SO NOW THAT I HAVE HAD ESTABLISHED THIS
9 MEDICAL HISTORY BACK IN -- SORRY -- ESTABLISHED MEDICAL
10 TREATMENT HERE IN -- IN KENTUCKY, I REALLY FOCUSED IN ON
11 TAKING MY EXAM. REALLY LEANING IN ON THAT.

12 AND ON OCTOBER 13TH, 2021, I ASKED FOR --
13 I LOOKED -- I APPLIED FOR ACCOMMODATIONS.

14 SO IF WE CAN LOOK AT PLAINTIFF'S EXHIBIT
15 NUMBER 2?

16 SO THIS DOCUMENT HERE IS A REPRESENTATION
17 OF -- WELL, IT IS THE OFFICIAL DOCUMENT FROM THE NBME
18 REQUESTING FOR TEST ACCOMMODATIONS ON THE U.S.M.L.E.
19 STEP EXAMINATION.

20 AND IF WE CAN SCROLL DOWN, PLEASE?

21 SCROLL UP JUST A LITTLE BIT?

22 SO WHEN I WAS REQUESTING -- SCROLL UP?

23 THERE WE ARE. YES.

24 SO WHEN I WAS REQUESTING THESE -- WHEN I
25 WAS REQUESTING ACCOMMODATIONS, I WENT ONTO THE WEBSITE

1 AND I, AS -- AS I DO, IT'S IN MY CHARACTER TO GO TO THAT
2 WEBSITE, LOOK FOR THE LINK THAT SAYS DOWNLOAD
3 APPLICATION, DOWNLOADED THAT, AND WHEN I READ THESE
4 GUIDELINES HERE IT SAYS, AS EXPLAINED IN THE GUIDELINES
5 ET CETERA YOU MUST PROVIDE SUPPORTING DOCUMENTATION, AND
6 THEY HAVE THIS LITTLE CHECKLIST HERE, OF A PERSONAL
7 STATEMENT, AND CERTIFICATION, OF PRIOR TEST
8 ACCOMMODATIONS, A COMPLETE AND COMPREHENSIVE EVALUATION,
9 AND SUPPORTING DOCUMENTS.

10 SO THIS IS THINGS -- AND THINGS THAT ARE
11 BOLDED ON THIS DOCUMENT THAT I NOTICED, BECAUSE THOSE
12 THINGS JUMP OUT AT ME. AND I -- AS WE SCROLL DOWN,
13 PLEASE?

14 WHAT I DID IS, IS I WENT AHEAD AND FILLED
15 OUT THIS EXAMINATION FOR STEP 1. WE CAN SEE MY NAME
16 THERE. KEEP SCROLLING, PLEASE? AND KEEP GOING. OKAY.

17 NOW THAT WE ARE HERE, AND ACCOMMODATIONS
18 I REQUESTED FOR ADDITIONAL TIME -- SORRY, ADDITIONAL
19 BREAK, AS WE CAN SEE IT SAYS, STEP 1 CHECK ONLY ONE BOX
20 HERE, I DID ADDITIONAL BREAK TIME OVER TWO DAYS AND I
21 ALSO SELECTED 100 PERCENT OF TIME OVER TWO DAYS.

22 AND ONE OF THOSE -- AND ONE OF THE KEY
23 REASONS WHY I WENT AHEAD AND ASKED FOR THIS IS BECAUSE,
24 I KNEW THAT WITH THE SEVERITY OF MY -- THAT I FELT THAT
25 THE SEVERITY OF MY ADHD AND ANXIETY THIS WOULD ALLOW FOR

1 ME TO GIVE MYSELF THE BEST OPPORTUNITY TO -- THE BEST
2 OPPORTUNITY TO PERFORM WELL ON THE MERITS OF MY
3 KNOWLEDGE, VERSUS WHETHER OR NOT I AM GOING TO GO IN
4 THERE AND JUST BE FINNICKEY, BUT NOT ONLY THAT I ALSO
5 KNOW THAT WHEN APPLYING FOR ACCOMMODATIONS TO TAKE THE
6 NBME BY THE -- BY THE UNIVERSITY, THAT WE GOT
7 100 PERCENT OF TIME. SO I DECIDED ON HERE THAT I WOULD
8 DO THE EXACT SAME THING ON THIS DOCUMENTATION.

9 IF WE CAN SCROLL DOWN? KEEP GOING, NEXT
10 PAGE.

11 HERE IT ASKS US ON THIS DOCUMENTATION
12 ABOUT INFORMATION ABOUT YOUR IMPAIRMENT AND IT ASKED
13 ABOUT THE DIAGNOSTIC CODES AND WHAT DISABILITIES I HAVE
14 AND WHAT YEAR I WAS DIAGNOSED. AND AS -- I MEAN -- AT
15 THIS TIME WHAT -- I GOT OUT MY MEDICAL RECORDS THAT I
16 HAD AND THEN RECORDS THAT I WAS GOING TO SUBMIT TO THE
17 NBME, AS A PART OF THIS APPLICATION, WHICH IS HOW I KNEW
18 WHAT THE DIAGNOSTIC CODES WERE -- OF -- AND I PUT THOSE
19 DOWN HERE AND WITH THE DISABILITY OF ADHD AND TEST
20 ACCOMMODATION -- SORRY, AND TEST ANXIETY, THAT WERE
21 DIAGNOSED IN 2013 AND 2018, RESPECTFULLY.

22 IF WE CAN SCROLL DOWN EVEN MORE?

23 THEY ASK ON THIS DOCUMENT IF I HAD
24 RECEIVED ANY ACCOMMODATIONS. SO IT SAYS HERE, "IF
25 ACCOMMODATIONS WERE PROVIDED, ATTACH OFFICIAL

1 DOCUMENTATION FOR EACH TESTING AGENCY CONFIRMING THE
2 TEST ACCOMMODATIONS THEY PROVIDED."

3 WELL, WHEN I READ THIS, IT IS ASKING ME
4 WHAT OFFICIAL DOCUMENTATIONS. AND I -- I DIDN'T HAVE
5 ANY OFFICIAL DOCUMENTATION OF TESTING ACCOMMODATIONS AND
6 I DIDN'T WANT TO LIE TO THE -- ON THE APPLICATION AND
7 SAY THAT I GOT THESE TYPE OF ACCOMMODATIONS, WHEN THEY
8 WERE UNOFFICIAL ACCOMMODATIONS.

9 AND AT THE TIME I ALSO DIDN'T REALIZE
10 THAT THE NBME EXAM THAT I TOOK THAT WAS GIVEN TO ME BY
11 THE UNIVERSITY WAS ACTUALLY AN OFFICIAL ACCOMMODATION
12 GIVEN TO ME BY THE UNIVERSITY. IT WAS, TO MY
13 RECOLLECTION AND TO MY KNOWLEDGE, WHICH I HAVE ALSO
14 STATED IN MY DEPOSITION THAT I THOUGHT THAT IT WAS THE
15 NBME WHO ACTUALLY GAVE THESE ACCOMMODATIONS, WHICH I WAS
16 CORRECTED AND THANKED THEM FOR THAT -- THAT INFORMATION
17 GOING FORWARD.

18 AND THEY ASKED HERE ABOUT DIFFERENT
19 ACCOMMODATIONS THAT WAS PROVIDED HERE. SO ON THE ACT, I
20 COULD HAVE LEFT THIS BLANK BUT I DECIDED NOT TO, BECAUSE
21 I TOOK THOSE EXAMS; RIGHT? SO THE ACT AND THE MCAT, BUT
22 WHEN I TOOK THEM -- WHEN I DID THIS PARTICULAR -- WHEN I
23 APPLIED FOR THIS, I SAID NO TO IT, BECAUSE AT THAT TIME
24 I WAS NOT AWARE THAT -- OF -- THAT THE DISABILITY WAS
25 THERE.

1 AND THAT ALSO FOR THE MCAT, I ALSO PUT
2 THAT NO, I DID NOT RECEIVE ANY ACCOMMODATIONS ON THE
3 MCAT, BUT I ALSO STATED HERE THAT I HAD -- I WAS NOT
4 AWARE. I PUT HERE, DIDN'T KNOW I COULD.

5 TO EVEN APPLY FOR -- YOU KNOW,
6 ACCOMMODATIONS AND THINGS.

7 AND IF WE CAN SCROLL DOWN SOME MORE?

8 WHEN DOING THIS -- YOU KNOW, THESE
9 ACCOMMODATIONS, I -- THEY ASKED HERE ABOUT DIFFERENT
10 SCHOOLINGS. I DIDN'T PUT ANYTHING DOWN. AS YOU CAN
11 SEE, IN UNDER GRAD, BECAUSE ONE OF THE SIDE EFFECTS --
12 WELL, I WON'T GO INTO THAT AS MUCH -- BUT, OF ADHD IS
13 THE FOCUSING ON THOSE SMALL LITTLE DETAILS.

14 YOU KNOW, I TEND TO MOVE FAST, AS YOU
15 HAVE HEARD IN TESTIMONIES ABOUT ME, ET CETERA. BUT I
16 READ THIS AND SAID OH, OKAY, THEY ASKING ME NOW WHAT
17 ACCOMMODATIONS HAVE YOU HAD AND DID YOU HAVE
18 ACCOMMODATIONS WHEN YOU WAS IN THESE PARTICULAR LEVELS
19 OF -- OH, SORRY -- HERE IS -- YES -- ACCOMMODATIONS THAT
20 YOU RECEIVED IN THESE PARTICULAR ASPECTS OF YOUR
21 EDUCATION.

22 AND AT THAT TIME I WROTE, I SAID, OH, OF
23 COURSE, I HAD ACCOMMODATIONS AT BEREA. SO I WROTE BEREA
24 COLLEGE DOWN BUT THEN I SAID WAIT A SECOND, NO, THEY ARE
25 TALKING ABOUT OFFICIAL. I CAN'T -- I CAN'T PROVE THAT

1 TO THEM BECAUSE I HAD ALREADY GRADUATED AND NO ACCESS TO
2 THOSE PROFESSORS AND THINGS OF THAT MATTER, SO THAT'S
3 WHY I CROSSED IT OUT TO TRY TO BE AS HONEST AND TO
4 RESPECT THE SYSTEM THAT THEY HAD IN PLACE HERE.

5 AND IF WE CAN SCROLL DOWN SOME MORE?

6 WE SEE HERE NOW THEY ARE ASKING ABOUT
7 ACCOMMODATIONS THAT I HAD WHEN I WAS IN PRIMARY SCHOOL
8 AND SECONDARY SCHOOL AND I QUOTE WHAT IT SAYS HERE,
9 "LIST EACH SCHOOL OF ALL FORMAL ACCOMMODATIONS
10 RECEIVED," -- I'M SORRY, "YOU RECEIVED, AND THE DATES
11 ACCOMMODATIONS WERE PROVIDED."

12 AGAIN, I WAS NOT ABLE TO PROVIDE THAT
13 INFORMATION BECAUSE EVEN THOUGH I WAS -- YOU KNOW, LATER
14 INFORMED THAT I HAD THESE TYPES OF UNOFFICIAL
15 ACCOMMODATION, THE WORDING HERE IS SAYING PROVIDE ALL
16 FORMAL, OR IN MY INTERPRETATION I THOUGHT THAT MEANT
17 OFFICIAL DOCUMENTATION OF THESE ACCOMMODATIONS.

18 SO THROUGH HIGH SCHOOL AND MIDDLE SCHOOL
19 AND ELEMENTARY SCHOOL I PUT DOWN THAT, NO, I DID NOT
20 HAVE THESE FORMAL OFFICIAL ACCOMMODATIONS. AND I DIDN'T
21 KNOW HOW TO NECESSARILY EXPLAIN TO THESE PEOPLE -- SORRY
22 -- AND THIS IS WHAT I ACTUALLY THOUGHT TO MYSELF -- TO
23 THESE PEOPLE, HOW DO I SAY THIS TO THEM, THAT I GOT ALL
24 OF THESE TYPE OF THINGS AS WELL.

25 AND THEN OVER HERE, I PUT THAT THE DATES

1 PROVIDED WAS NOT DIAGNOSED YET, BECAUSE DURING THOSE
2 TIMES, I WAS NOT AWARE -- WHEN I WAS IN ELEMENTARY
3 SCHOOL, MIDDLE SCHOOL, AND HIGH SCHOOL -- IF I HAD THIS
4 DISABILITY. SO I WOULD NOT HAVE THAT DOCUMENTATION
5 DATING BACK THEN.

6 SORRY -- DATING BACK TO THAT DATE. AND
7 THAT'S WHY I PUT THERE, WASN'T DIAGNOSED YET, EVEN
8 THOUGH I ACTUALLY WAS, ACCORDING TO MY MOTHER'S
9 TESTIMONY.

10 AND AS WE CAN -- SCROLL DOWN, PLEASE?

11 UH-HUH. KEEP GOING.

12 AND THIS IS THE SIGNATURE SAYING THAT --
13 THE INFORMATION HERE SAYING, THIS IS THE SIGNATURE IN
14 SUMMARY SAYING THAT I PROVIDE TRUE AND ACCURATE
15 INFORMATION TO THE BEST OF MY ABILITY AND THOSE TYPE OF
16 THINGS AND I SIGNED THERE WITH THE DATE OF 10-13-21.

17 AND AS WE CAN SCROLL DOWN HERE -- IF WE
18 CAN -- STOP. SCROLL UP A LITTLE BIT?

19 WE CAN SEE THAT, YOU KNOW, DURING THESE
20 TIMES WHEN I WAS APPLYING AND EVEN STUDYING FOR THE EXAM
21 THERE WAS A HUGE DELAY IN ALL OF US MEDICAL STUDENTS
22 ACROSS THE UNITED STATES BECAUSE EVERYTHING SHUT DOWN
23 AND YOU WASN'T ABLE TO GO TO THESE -- THESE TESTING
24 SITES SUCH AS THE PROMETRIC CENTER, WHERE THE U.S.M.L.E.
25 IS ACTUALLY TRUSTED TO BE ADMINISTERED.

1 UNLIKE MY WIFE, WHO WAS IN LAW SCHOOL --
2 WHO WAS TAKING HER -- STUDYING FOR HER BAR EXAM, THEY
3 ALLOWED FOR THEM TO TAKE THEIR BAR EXAMINATIONS IN THEIR
4 HOMES WITH CAMERAS AROUND TO SHOW -- MAKE SURE THAT THE
5 -- TO PROTECT THE VALIDITY OF THE EXAM, AND MIRRORS, AND
6 IN A CLOSED ROOM WITH NOTHING ON THE WALLS, THEY WERE
7 ABLE TO TAKE THEIR EXAM.

8 BUT MEDICAL STUDENTS AND MEDICAL
9 GRADUATES, WE WERE NOT ALLOWED TO DO THAT. SO WE HAD TO
10 WAIT AND ON THIS DOCUMENTATION, IT SAYS, "DUE TO
11 BUSINESS RESTRICTIONS IN PHILADELPHIA, BECAUSE OF
12 COVID-19, PLEASE SUBMIT YOUR REQUEST FORM AND SUBMITTING
13 DOCUMENTATION VIA E-MAIL OR FAX, AND THAT REQUESTS SENT
14 TO US VIA MAIL WILL BE DELAYED."

15 AND I SAY THAT BECAUSE LATER ON WHEN I
16 DID APPLY FOR ACCOMMODATIONS IN OCTOBER, I REALLY DIDN'T
17 GET A -- A CONFIRMATION UNTIL JANUARY. BUT I ALREADY
18 KIND OF HAD -- I HAD ALREADY HAD THAT UNDERSTANDING OF
19 THAT BECAUSE IT WAS WRITTEN OUT HERE.

20 AND IF WE CAN SCROLL DOWN EVEN MORE,
21 PLEASE?

22 HERE AS WAS A PART OF MY APPLICATION, I
23 SUBMITTED MY -- MY PERSONAL STATEMENT OF -- OF MY
24 DIAGNOSES. AND FOR -- BECAUSE I -- I UNDERSTAND THE
25 DEPTH AND THE IMPORTANCE OF MY CLAIMS HERE IN THIS CASE,

1 I WOULD LIKE TO -- ONE PAGE HERE AS YOU CAN SEE, OF THIS
2 TESTIMONY OF WHAT I SUBMITTED AS PART OF MY APPLICATION.

3 IT SAYS, "TO WHOM IT MAY CONCERN, MY NAME
4 IS" --

5 THE COURT: DR. KITCHENS.

6 DR. KITCHENS: IT'S VERY SHORT.

7 THE COURT: DOCTOR?

8 DR. KITCHENS: YES, SIR?

9 THE COURT: ARE YOU ABOUT TO READ THIS?

10 DR. KITCHENS: NO, I WAS GOING TO SAY
11 JUST THE LAST PART OF IT, WHICH IS --

12 THE COURT: OKAY.

13 DR. KITCHENS: YES, IT'S VERY SHORT, YOUR
14 HONOR, AS HAS BEEN MENTIONED THROUGHOUT THIS ENTIRE
15 TRIAL.

16 BY DR. KITCHENS:

17 Q. SO I WAS GOING TO SAY, "TO WHOM IT MAY CONCERN,
18 MY NAME IS MARKCUS KITCHENS," AND THEN WE DROP DOWN TO
19 THIS LAST PARAGRAPH, IT SAYS, "AS AN INDIVIDUAL WITH
20 ADHD AND SEVERE TESTING ANXIETY" -- THIS IS THE LAST ONE
21 -- YES, THANK YOU. THANK YOU.

22 "WITH SEVERE TEST ANXIETY STANDARDIZED
23 EXAMS HAVE OFTEN PRESENTED CHALLENGES TO MY CAPACITY AS
24 A STUDENT, AS WELL AS A PROFESSIONAL. WHEN EXAM SCORES
25 ARE USED AS METRIC FOR WHETHER A CANDIDATE IS QUALIFIED,

1 FOR A PERSON LIKE MYSELF IT REFLECTS MY ABILITY TO TAKE
2 AN EXAM RATHER THAN MY COMPREHENSION, UNDERSTANDING OF
3 THE MATERIAL. IN ORDER TO BETTER REFLECT MY -- MY
4 ABILITIES, I AM REQUESTING ADDITIONAL TIME TO COMPLETE
5 THE EXAM," THE ADDITIONAL TIME -- "AND I FEEL THAT THE
6 ADDITIONAL TIME WILL MAXIMIZE MY ABILITY TO ACHIEVE MY
7 HIGHEST -- MY HIGHEST QUALITY OF WORK BY DECREASING MY
8 ANXIETY AND INCREASING MY FOCUS."

9 "WHILE IN UNIVERSITY, I NEVER HAD -- HAD
10 THE NEED TO FILE AN OFFICIAL DOCUMENTATION FOR MY
11 SITUATION DUE TO MY PROFESSORS' WILLINGNESS TO TAKE MY
12 EXAMS ONE-ON-ONE WITH EXTENDED TIME. INCLUDED IN MY
13 APPLICATION A LETTER FROM MY PRIMARY CARE PHYSICIAN,
14 OUTLINING THE SEVERITY OF MY SYMPTOMS AND THE NEED FOR
15 EXTENDED TIME."

16 "ALSO IN THE APPLICATION YOU WILL NOTICE
17 MY CURRENT MEDICAL -- MEDICATION LIST FOR MY ADHD AND
18 TESTING ANXIETY."

19 THE REASON THAT I WANTED TO -- YOU KNOW,
20 AND FOR ME, I SUBMITTED THIS DOCUMENT -- THIS PERSONAL
21 STATEMENT BECAUSE I THOUGHT THAT IT WAS SUFFICIENT
22 ENOUGH FOR -- FOR THIS APPLICATION. YOU KNOW, I FELT
23 THAT, OKAY -- WHEN I READ IT, I SAID, ALL RIGHT.

24 SO I GAVE DIFFERENT THINGS, I GAVE MY
25 DIAGNOSES, I GAVE -- YOU KNOW, THEY CAN CONTACT MY

1 DOCTOR. I GOT A DOCTOR'S NOTE. IF THEY DON'T LIKE THE
2 DOCTOR'S NOTE THEY CAN ALWAYS CALL HIM, OR TO VERIFY OR
3 GET MORE INFORMATION.

4 AND ALSO, I AM EXPLAINING TO THEM WHY
5 EXACTLY I HAVE IN THE -- ON THE APPLICATION ITSELF THAT
6 I DON'T HAVE -- THAT I PUT THERE, NO OFFICIAL
7 DOCUMENTATION. FROM THE VERY BEGINNING I WAS WANTING TO
8 BE AS TRANSPARENT AS POSSIBLE ON MY APPLICATION TO --
9 FOR ASKING FOR ACCOMMODATIONS HERE.

10 AND ALSO WANTING TO DRAW ATTENTION FOR
11 THEM TO ALSO SEE THAT I HAVE MEDICATION FOR THESE
12 PARTICULAR DIAGNOSES AND IN MY MIND, AT THAT TIME MY
13 UNDERSTANDING, AS A PERSON -- AS AN ENTITY SUCH AS --
14 WHO PROVIDE MEDICAL BOARDS -- OR BOARDS FOR IN THE
15 MEDICAL FIELD, I FIGURED THAT, OH, WELL, THEY WILL
16 UNDERSTAND. WHEN YOU SEE ADDERALL, THIS IS A DRUG THAT
17 IS USED PRIMARILY FOR ADHD AND HIGH -- AND HEAVILY
18 REGARDED OR REGULATED WITHIN THE UNITED STATES, AND THAT
19 A DOCTOR PROBABLY WOULD NOT JUST, YOU KNOW, GO WRITE
20 THIS MEDICATION BECAUSE IT ACTUALLY REFLECTS BACK ON
21 THEM IN THOSE CASES.

22 AND IF WE CAN SCROLL DOWN SOME TO THE
23 NEXT PART OF THE APPLICATION?

24 THIS HERE -- SORRY, SCROLL UP JUST A
25 LITTLE BIT?

1 TO YOU KNOW, OH, DR. KHAN, CAN YOU WRITE ME MORE, CAN
2 YOU ASK. IT WAS THE GENUINENESS THAT I HAD FROM THE
3 UNDERSTANDING OF THIS NOTE THAT IT WAS JUST FINE.

4 BECAUSE HONESTLY, IF I DIDN'T I WOULD
5 HAVE ASKED HIM FOR MORE INFORMATION THERE.

6 WE CAN SCROLL DOWN SOME MORE.

7 HERE IS THE MEDICAL DOCUMENTATION THAT I
8 SUBMITTED. THIS IS ALSO FROM NORTH WESTERN MEDICINE
9 DEPARTMENT -- IN THE DERMATOLOGY DEPARTMENT.

10 NOW, WHY DID I SUBMIT THIS DOCUMENT?

11 THE ONLY THING I KNEW WAS -- IN MY MIND
12 AT THAT TIME WAS, I AM BEING TREATED AT NORTH WESTERN
13 MEDICINE, DR. KHAN REFERRED ME TO -- BECAUSE I CAME TO
14 HIM SAYING THAT, YOU KNOW, I WAS HAVING SOME ISSUES WITH
15 PSEUDOFOLLICULITIS BARBAE, WHICH IS A VERY COMMON THING
16 IN THE AFRICAN AMERICAN DIASPORA WHERE WE HAVE INGROWN
17 HAIRS. AND SO I WAS TELLING HIM THAT IT WAS GIVING ME
18 GREAT IRRITATION. SO WHAT DID HE WAS HE REFERRED ME,
19 WHICH THE MEDICAL RECORDS SHOWS THAT -- THAT HE REFERRED
20 ME TO THIS DERMATOLOGIST.

21 AND SO WHEN I WAS GOING THROUGH MY
22 MEDICAL FILE FOR THIS APPLICATION, I WENT THROUGH AND I
23 HAD ALREADY TALKED ABOUT, IN MY PERSONAL STATEMENT OF
24 THINGS THAT I'M GOING TO PROVIDE TO YOU, AND SO WHAT I
25 DID WAS I JUST PULLED UP THIS -- THIS DOCUMENT, NOT

1 HAVING ANY, YOU KNOW, UNDERSTANDING ON HAVING -- EVEN
2 SEEING ABOUT DERMATOLOGY ON THERE.

3 AND THAT HAS NO RECOLLECTION OF THAT, YOU
4 KNOW, THE DERMATOLOGIST PROVIDING ME WITH THIS
5 PARTICULAR DIAGNOSES, BUT WHAT IT DOES SHOW IS THAT IT
6 IS AN OFFICIAL MEDICAL RECORD THAT HAS MY PAST MEDICAL
7 HISTORY -- IF WE CAN SCROLL DOWN SOME, PLEASE?

8 PAST MEDICAL HISTORY OF ADHD. WHICH IS
9 WHY I CIRCLED IT WITH A RED PEN TO SAY, HEY, NOTHING
10 ELSE ON HERE IS REALLY IMPORTANT BUT THIS PARTICULAR
11 PART HERE. TO SHOW AND TO PROVE TO YOU, NBME, THAT I
12 HAVE BEEN DIAGNOSED WITH THIS PARTICULAR DIAGNOSES
13 DATING ALL THE WAY BACK TO 2013.

14 WHICH IS THE REASON WHY I SAID, OH, WELL,
15 IT'S NO REASON FOR ME TO CIRCLE A WISDOM TOOTH
16 EXTRACTION. THAT'S IRRELEVANT TO THE APPLICATION, SO I
17 -- SCROLLED DOWN EVEN MORE -- IF WE CAN SCROLL DOWN EVEN
18 MORE, SORRY -- I ALSO DECIDED ON THAT SAME NOTE THAT WAS
19 RECOGNIZED, AND AS WE CAN SEE HERE, THAT THIS IS THE
20 TIME WHEN I WAS -- I CIRCLED THE BUSPIRONE, WHICH -- AND
21 I ALSO CIRCLED HERE FOR THEIR CONVENIENCE OF ANXIETY
22 AND-- SO THAT THEY WOULD BE ABLE TO SEE THAT, AND ALSO
23 THE ADDERALL.

24 AND I CIRCLED THAT AS WELL TO MAKE SURE
25 -- TO MAKE IT AS EASY AS POSSIBLE ON THE -- ON THE -- ON

1 THE ENTITY WHO -- ON THE NBME WHEN THEY WERE REVIEWING
2 MY DOCUMENT.

3 AND IF YOU CAN SCROLL DOWN SOME MORE, I
4 ALSO PROVIDED HERE A DOCUMENT THAT WE HAVE ALL SEEN MANY
5 A TIMES HERE SHOWING THE ASSESSMENT, BECAUSE THEY ASKED
6 IN THE APPLICATION THERE IF YOU CAN PROVIDE ANY, YOU
7 KNOW, COMPREHENSIVE EXAMINATIONS OR ASSESSMENTS, ET
8 CETERA. BUT WHAT I HAD IN MY POSSESSION WAS THIS.

9 AND SO WHEN I WAS LOOKING THROUGH IT I
10 SAID, AH, PERFECT. I SEE HERE THAT IT SAYS THAT THEY
11 GAVE AN ASSESSMENT, ASSESSMENT PLAN ORDERS, AS WE CAN
12 SEE AND I CIRCLED THEM, 1 AND 2.

13 ASSESSMENT NUMBER ONE, ATTENTION
14 DEFICIT-HYPERACTIVE DISORDER WAS THERE. AND IT ALSO
15 SHOWS REFERRED TO HEALTH COUNSELORS AND EVALUATE AND
16 TREAT. I KEPT LOOKING THROUGH ALL OF MY DOCUMENTS AT --
17 YOU KNOW, THROUGH MY MEDICAL RECORDS BECAUSE I AM THE
18 TYPE OF PERSON THAT I LIKE TO PRINT OFF MY MEDICAL
19 RECORDS IF I'M MOVING JUST IN CASE I MAY NEED THEM.

20 AND IT ALSO SHOWED HERE THAT THEY HAD THE
21 HEALTH COUNSELOR EVALUATE AND TREAT. NOW I DID NOT
22 NECESSARILY HAVE THOSE -- THAT -- THAT DOCUMENT OR THAT
23 SPECIFIC EXAM OR EVALUATION THAT THEY PROVIDED BUT MY
24 UNDERSTANDING WAS THAT THESE ARE PEOPLE IN THE MEDICAL
25 FIELD WHO WOULD KNOW THAT THIS IS AN OFFICIAL MEDICAL

1 RECORD AND THAT EVEN THOUGH THERE IS NO OFFICIAL
2 DOCUMENT OF THAT, OF THE EVALUATION, WE CAN SEE THAT
3 THIS PERSON ACTUALLY DID HAVE AN EVALUATION AND THE --
4 AND AN EVALUATION FOR ANXIETY WAS ALSO CONDUCTED THERE.

5 IF WE CAN SCROLL DOWN SOME MORE?

6 AND ALSO ON THE DOCUMENT HERE, SAME
7 DOCUMENT, DATING BACK TO 2018, SAYING OF -- THE
8 REFERRALS OF -- UNDER ORDER, MENTAL HEALTH COUNSELOR
9 EVALUATE AND TREAT. AND THE REASON THAT THEY EVEN DID
10 THAT AT THAT PARTICULAR TIME, IN 2018, WAS BECAUSE MY
11 ANXIETY LEVELS WAS SO HIGH AT THAT TIME -- I DON'T
12 REALLY UNDERSTAND WHY BUT IT WAS -- AND I WANTED TO
13 REACH OUT FOR A SERVICE DOG, AN EMOTIONAL SUPPORT
14 ANIMAL, TO KIND OF HELP MITIGATE THOSE STRESSORS THAT I
15 HAD THERE.

16 WE CAN SCROLL DOWN SOME MORE, PLEASE?

17 AND THAT WAS -- SORRY, IF YOU CAN SCROLL
18 BACK UP JUST A LITTLE BIT? YES.

19 HERE, I MADE SURE THAT I ATTACHED IN FULL
20 THAT DOCUMENT WITH DR. HACKMAN'S SIGNATURE THERE AND THE
21 DATE AND STAMPS THAT IT WAS ELECTRONICALLY SIGNED. SO
22 TO HELP VALIDATE THE DOCUMENT -- IF WE CAN SCROLL DOWN
23 SOME MORE?

24 THIS IS A DOCUMENT FROM WHITE HOUSE
25 CLINIC.

1 IF YOU CAN SCROLL DOWN? YES, HERE.

2 SO I ATTACHED THIS PARTICULAR DOCUMENT IN
3 MY EVALUATION -- I MEAN, SORRY, NOT IN MY EVALUATION,
4 BUT IN MY APPLICATION FOR ACCOMMODATIONS TO SHOW THAT
5 ONE, IN THIS PARTICULAR DATE, I HAD AN EVALUATION DONE,
6 IT HAS BEEN MENTIONED HERE.

7 BUT THEN ALSO, IN THIS PARTICULAR NOTE
8 HERE, UNDER HISTORY OF PRESENT ILLNESS IT SAYS, "ONE
9 MEDICINE REFILL, LAST SEEN IN 2016. FINISHED FIRST YEAR
10 OF MEDICAL SCHOOL, WORKING WITH DANIEL LEE," WHICH IS
11 DR. DANIEL LEE, WHO IS A NEUROLOGIST HERE IN RICHMOND
12 AT BAPTIST HEALTH, "AND LEAVES IN SEPTEMBER TO GO BACK
13 -- TO GO BACK. HAS ONE MORE YEAR THERE AT BASIC
14 SCIENCES AND TWO YEARS OF CLINICALS."

15 SHE ALSO NOTED THAT ADDERALL SINCE 2014,
16 AND SAYS -- AND HE SAYS THAT I WAS FOCUSING BETTER ON
17 THE ADDERALL THERE. AND MY HOPE OF SUBMITTING THIS WAS
18 TO SHOW THAT, AGAIN, ANOTHER TRACK RECORD OF THIS
19 PARTICULAR DIAGNOSES AND THAT I WAS A MEDICAL STUDENT
20 AND I WAS ABROAD, BUT NOT JUST THAT -- AND YES, THAT I
21 WAS ON THE ADDERALL FROM 2014.

22 BUT IF WE CAN SCROLL DOWN SOME MORE?
23 YES, A LITTLE BIT MORE? HERE. SCROLL UP A LITTLE BIT
24 FOR FULLNESS HERE?

25 SO THE -- THE IMPORTANCE OF THIS

1 PARTICULAR DOCUMENT, NOT ONLY BECAUSE IT SHOWED ME -- IT
2 SHOWED, IN MY IMPRESSION, THAT IT WOULD HAVE SHOWN THE
3 NBME THAT AN EVALUATION WAS DONE -- IS THAT -- IN THE
4 RECOMMENDATION, BECAUSE I DIDN'T HAVE THIS MEDICATION
5 FOR -- WITH A HUGE GAP OF A YEAR BETWEEN THE LAST TIME I
6 WAS REFILLED, IT IS COMMON PRACTICE FOR A PHYSICIAN TO
7 NOT FEEL AS COMFORTABLE WRITING THIS TYPE OF MEDICATION
8 TO A PERSON WHO HAS POTENTIALLY SHOWN THAT THEY DON'T
9 NEED THE MEDICATION.

10 AND TO SHOW ALSO, IS THIS PERSON DRUG
11 SEEKING OR IS THIS PERSON MALINGERING, ET CETERA. SO
12 WHAT -- WHAT SHE DECIDED TO DO HERE THE DOCTOR,
13 ACCORDING TO THIS DOCUMENT HERE, IS THAT SHE PUT IN FOR
14 ASSESSMENT AND PLAN, ASSESSMENT PROVIDER PLAN, ATTENTION
15 AND CONCENTRATION DEFICIT. IS ASKING ME TO WRITE A
16 PRESCRIPTION FOR ADDERALL. HE IS LEAVING FOR POLAND IN
17 SEPTEMBER. HE SAYS HE IS -- AND HE SAYS POLAND DOES NOT
18 PRESCRIBE ADDERALL FOR ADHD.

19 AND WHAT I WAS DOING THERE -- AND THAT
20 TIME WAS, I WAS TRYING TO EXPLAIN TO THE DOCTOR THAT,
21 LISTEN, THE REASON THAT I DIDN'T HAVE THE MEDICATION WAS
22 NOT THAT I DIDN'T NEED IT, IT'S JUST THAT I COULD NOT
23 GET IT. IT WASN'T -- I MEAN, IT WAS ILLEGAL TO HAVE.

24 AND SHE THEN WENT ON TO SAY, BUT WAS TOLD
25 IF HE HAD AN M.D. HERE TO WRITE A LETTER HE WOULD BE

1 ABLE TO GET IT.

2 I LATER FOUND OUT THAT THAT WAS NOT A
3 TRUE STATEMENT. IT IS COMPLETELY ILLEGAL. AND THAT WAS
4 ONE OF THE REASONS WHY WHEN I DID SEEK TREATMENT PLAN IN
5 POLAND, WHICH I DO NOT HAVE ACCESS TO, I WAS INFORMED OF
6 THAT AND NO DOCTOR WOULD WRITE THE MEDICATION THERE.

7 SO ALSO, THE LAST LINE THAT SHE SAYS
8 HERE, AS HE -- THAT HE WAS NOT HAPPY WITH THIS. SAYS HE
9 WAS -- HE HAS -- THAT HE WAS SEEING COLLEEN AND THEN DR.
10 DAVID WAS WRITING HIM THE PRESCRIPTION AND -- AND
11 BROUGHT IN A BOTTLE DATED FOR 2016, AND HER PLAN OF
12 ORDERS THAT SHE PUT IN WAS A REFERRAL FOR -- FOR
13 PSYCHIATRIC EVALUATION AND TO TREAT.

14 SO IN THIS DOCUMENT HERE, AND NOT ONLY
15 JUST THE DOCUMENT, I SUBMITTED THIS BECAUSE AGAIN, IT IS
16 SHOWING THAT I HAVE BEEN TREATED AND THAT I HAVE HAD AN
17 EVALUATION THAT HAS BEEN REFERRED TO -- THAT HAS BEEN
18 REFERRED TO AS TO A PSYCHIATRIST AND THEN TO COME BACK
19 AND TO GET THE MEDICATION.

20 AND IF WE CAN SCROLL DOWN SOME MORE?

21 YES. WE CAN SEE ALSO IS WHEN SHE WROTE
22 THIS ON 7-26-2017, AND IT SAYS HERE, REFERRAL FOR
23 PSYCHIATRIC EVALUATION. AND THEN HER NOTES TO THE SIDE
24 THERE SAYING THAT, NEEDS EVALUATION FOR ADHD, WHICH I
25 THOUGHT THEY WOULD HAVE SEEN THAT.

1 SO IF WE CAN SCROLL DOWN -- AND IT ALSO
2 HAS THE DATE THERE AS WELL.

3 I WON'T GO OVER THIS DOCUMENT AGAIN FOR
4 THE SAKE OF -- FOR TIME AND THE RESPECT OF THE COURT,
5 BUT IT IS TO BE UNDERSTOOD THAT I DID SUBMIT THIS
6 DOCUMENT TO SHOW THAT I HAD ALREADY RECEIVED OFFICIAL
7 ACCOMMODATIONS ON A PAST HIGH STAKES STANDARDIZED
8 EXAMINATION, AND THAT EXTENDED TIME WAS GIVEN TO ME
9 THERE.

10 AND ONE THING, THE IMPORTANCE OF -- OF
11 THIS DOCUMENT THAT I HAVE NOT MENTIONED BEFORE IS, WHY
12 THIS IS IMPORTANT AND IF YOU SEE, IT SAYS EXAM DATE -- I
13 MEAN, SORRY, IT SAYS EXAM DATE, DECEMBER THE 10TH, 2020,
14 AND THE TIME IS AT 8:00 A.M.

15 IT IS IMPORTANT TO KNOW THAT WHEN -- ANY
16 TIME YOU HAVE A -- ACCOMMODATIONS FOR EXTENDED TIME FOR
17 -- TO TAKE THE CBSE, YOU ARE AUTOMATICALLY REQUIRED TO
18 START YOUR EXAMINATION AT 8:00 A.M., AND THAT IT WOULD
19 ALSO -- AND THEY DO THAT BECAUSE THEY HAVE TO MAKE SURE
20 -- THEY HAVE TO BE -- MAKE SURE THAT THEY HAVE ENOUGH --
21 THAT THEY HAVE STAFF THAT WILL BE AVAILABLE TO MAKE SURE
22 THAT YOU ARE GIVEN THE EXTENDED TIME THAT YOU ARE -- YOU
23 HAVE BEEN REWARDED THERE AND TO ALSO -- YES, TO MAKE
24 SURE YOU HAVE THAT TIME THERE.

25 AND IT DOES TAKE EXTRA DAYS FOR YOU TO BE

1 ABLE TO -- TO EVEN PICK WHICH DATE YOU CAN EVEN TAKE THE
2 EXAM ON. YOU CAN'T DO IT ONLINE. YOU HAVE TO CALL IN
3 AND TALK TO A PARTICULAR PERSON AND ALL OF THESE OTHER
4 STEPS THAT YOU HAVE TO TALK TO -- AND TALK TO A LIVE
5 PERSON, I'M SORRY, AND THEY WILL THEN CONTACT DIFFERENT
6 LOCATIONS IN YOUR VICINITY TO SEE WHO CAN ACTUALLY
7 ACCOMMODATE YOUR EXTENDED TIME BECAUSE YOU AUTOMATICALLY
8 GET 100 PERCENT EXTRA TIME.

9 IF WE CAN SCROLL DOWN SOME MORE, PLEASE?

10 I THINK THAT'S -- YES. AND THIS IS JUST
11 THE INSTRUCTIONS AND ALL THAT WAS GIVEN. OKAY.

12 THIS DOCUMENT HAS ALREADY BEEN IN TO THE
13 RECORD, YOUR HONOR?

14 THE COURT: YES. AND I WAS WAITING FOR
15 YOU TO FINISH WITH THE DOCUMENT. I THINK THIS IS A GOOD
16 TIME TO TAKE A LUNCH BREAK, IF THAT'S OKAY WITH
17 EVERYONE?

18 DR. KITCHENS: YES, SIR.

19 MS. MEW: YES.

20 THE COURT: ALL RIGHT. SO I WANT TO --
21 JUST SOMETHING TO THINK ABOUT OVER LUNCH AND HOW YOU ARE
22 PLANNING THE REMAINDER OF YOUR TESTIMONY AND THINKING
23 THROUGH IT, BEAR IN MIND THAT I THINK, YOU KNOW, WHEN A
24 DOCUMENT -- WHEN A DOCUMENT HAS BEEN ADMITTED INTO
25 EVIDENCE YOU ARE FREE TO REFER TO IT, ARGUE IT, I CAN

1 THINK ABOUT IT LATER, WE CAN DO ALL OF THAT LATER.

2 SO, YOU KNOW, TRY TO KEEP YOUR TESTIMONY
3 FOCUSED ON, YOU KNOW, ADDITIONAL INFORMATION THAT IS NOT
4 ON THE FACE OF THE DOCUMENT, WHICH A LOT OF WHAT I JUST
5 HEARD WAS BUT JUST BEAR THAT IN MIND TRY TO MAKE SURE WE
6 USE OUR TIME EFFICIENTLY; OKAY?

7 DR. KITCHENS: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. SO WHY DON'T WE
9 TAKE A LUNCH BREAK. IS IT OKAY WITH EVERYONE IF WE KEPT
10 IT KIND OF SHORT, IF WE DID A HALF-HOUR AND PICKED IT
11 BACK UP AT 1:30?

12 DR. KITCHENS: YES. AND YOUR HONOR, IF I
13 CAN ASK A QUESTION?

14 MS. MEW, DO YOU KNOW THE ORDER THAT YOU
15 INTEND TO GIVE AFTER MY TESTIMONY, WHO WILL BE NEXT?

16 MS. MEW: IT HONESTLY, DR. KITCHENS, IS
17 GOING TO COME DOWN TO THE TIMING, BUT I SUSPECT I WILL
18 START WITH AARON CONGAREE.

19 DR. KITCHENS: OKAY. I KNOW YESTERDAY
20 YOU ASKED ME THAT QUESTION AND I MADE SURE THAT I WANTED
21 TO GIVE YOU THAT.

22 MS. MEW: I KNOW, I'M NOT -- I PROMISE
23 YOU I AM NOT BEING PURPOSELY CAGEY, IT HAS TO DO WITH
24 PEOPLE'S SCHEDULES. I HAVE ONE WHO IS NOT AVAILABLE
25 PAST FOUR AND I DON'T KNOW HOW LONG THIS IS GOING TO GO

1 SO ITS JUST -- IT REALLY COMES DOWN TO THE SCHEDULING
2 BUT MY HOPE IS TO PUT AARON CONGAREE ON FIRST.

3 DR. KITCHENS: OKAY. THANK YOU.

4 THE COURT: ALL RIGHT. LETS TAKE A SHORT
5 LUNCH BREAK AND RESUME AT 1:30.

6 DR. KITCHENS: THANK YOU, YOUR HONOR.

7 (LUNCH BREAK TAKEN.)

8 THIS IS THE P.M. SESSION OF 5/16/23

9 (CLERK OPENS COURT.)

10

11 THE COURT: DURING THE -- HERE IN
12 PHILADELPHIA WE HAVE A THERE WAS A PRISON BREAK LAST
13 WEEK AND I WAS JUST TALKING TO THE -- OUR U.S. MARSHAL,
14 WHO IS TRYING TO FIND THE TWO GUYS WHO GOT OUT. THEY
15 GOT ONE OF THEM AND THEY GOT AN ACCOMPLICE, BUT THERE IS
16 STILL ONE OTHER PERSON ON THE LOOSE.

17 I TOLD HIM -- I ASKED HIM IF HE ALREADY
18 CHECKED EVERY DOG HOUSE AND HEN HOUSE AND WAREHOUSE AND
19 FARMHOUSE. HE DIDN'T THINK IT WAS THAT FUNNY.

20 DR. KITCHENS: SOUNDS LIKE KENTUCKY. SO
21 THAT WAS VERY FUNNY. THAT HAPPENS ALL THE TIME OUT
22 THERE.

23 THE COURT: I GUARANTEE YOU HE'S SEEN
24 THAT MOVIE PROBABLY LIKE 100 TIMES.

25 ALL RIGHT. WE ARE BACK TOGETHER. ANY

1 BUSINESS BEFORE WE GET BACK TO DR. KITCHENS?

2 MS. MEW: NO.

3 THE COURT: OKAY. DR. KITCHENS, YOU CAN
4 RESUME YOUR TESTIMONY. JUST A REMINDER, YOU ARE STILL
5 UNDER OATH.

6 DR. KITCHENS: YES, SIR. THANK YOU, YOUR
7 HONOR.

8 DIRECT EXAMINATION (RESUMED.)

9

10 DR. KITCHENS: WE LAST STOPPED I WAS LAST
11 TALKING ABOUT THE APPLICATION PROCESS AND THINGS, SO I
12 WILL MOVE FORWARD FROM THAT.

13 WHAT I WILL SAY IS WITH APPLYING FOR
14 THOSE OFFICIAL -- ACCOMMODATIONS WITH THE NBME, I WOULD
15 LIKE TO BRING UP THE EXHIBIT NUMBER PX 04.

16 AND SO THIS IS A DOCUMENT FROM THE NBME,
17 OF MY REJECTION LETTER THAT I RECEIVED. YOU CAN SEE MY
18 USMLE NUMBER IDENTIFICATION THERE.

19 AFTER -- FOR MY REJECTION, THIS IS THE
20 REJECTION LETTER THERE, SAYING IN PARTS THAT I DID NOT
21 PROVIDE SUFFICIENT ENOUGH OF DOCUMENTATION, ALONG THOSE
22 LINES. AND WHAT I DID IN THAT -- THAT MATTER IS I
23 E-MAILED THEM BACK, YOU KNOW, ASKING LIKE -- TELLING
24 THEM THAT THIS IS THE ONLY DOCUMENTATION THAT I HAVE TO
25 GIVE YOU ALL AND IT KIND OF -- AND I ALSO EXPLAINED TO

1 THEM MY RECOLLECTION ABOUT WHAT EXACTLY, YOU KNOW, I
2 ACTUALLY SUBMITTED TO THEM AND WHY I SUBMITTED THAT --
3 THAT SPECIFIC DOCUMENTATION.

4 AND THIS IS THE LETTER, IF WE CAN SCROLL
5 DOWN OR SCROLL UP. YES.

6 SO AS THEY SAID HERE, THE FIRST LINE IS
7 THEY HAVE THOROUGHLY REVIEWED -- THEY THOROUGHLY
8 REVIEWED THE DOCUMENTATION YOU PROVIDED. SORRY.

9 "WE HAVE THOROUGHLY REVIEWED THE
10 DOCUMENTATION YOU HAVE PROVIDED IN SUPPORT OF YOUR
11 REQUEST FOR TEST ACCOMMODATIONS ON THE UNITED STATES
12 MEDICAL LICENSING EXAMINATION STEP 1 EXAMINATION."

13 AND SO THEY TEND TO GIVE THIS BACKGROUND
14 OF THE ADA, AND WE CAN SCROLL DOWN. AND FOR TIME SAKE,
15 IT'S -- THIS DOCUMENT IS JUST TO REPRESENT THAT THERE
16 WAS A DENIAL LETTER THAT WAS GIVEN TO ME AND -- SORRY.

17 I WOULD LIKE FOR THIS DOCUMENT TO BE
18 ENTERED INTO THE RECORD AS PX 04?

19 MS. MEW: NO OBJECTION.

20 THE COURT: ADMITTED.

21 (PLAINTIFF EXHIBIT 04 IS ADMITTED INTO
22 EVIDENCE.)

23 DR. KITCHENS: AND SO WHEN I RECEIVED
24 THIS LETTER, IT WAS QUITE DEVASTATING TO ME, ESPECIALLY
25 KNOWING THAT EVERYTHING IN THE TRACK FOR MEDICAL

1 STUDENTS, MEDICAL GRADUATES GETTING READY FOR RESIDENCY,
2 IS THAT IT IS ON A TIGHT -- IT IS ON A TIME FRAME.
3 EVERYTHING DOES.

4 EVEN ON THE ECFMG IT IS VERY WELL KNOWN
5 AND ON THEIR WEBSITE WHERE YOU ONLY GET SEVEN YEARS TO
6 EVEN BE CERTIFIED TO EVEN TAKE ALL OF YOUR BOARDS TO BE
7 REPRESENTED AS AN IMG, OTHERWISE YOU NO LONGER HAVE THAT
8 OPPORTUNITY.

9 SO YOU ALL OF THE DIFFERENT PRESSURES
10 THAT WAS ON ME AT THE TIME THAT I FELT LIKE I SHOULD AT
11 LEAST TRY TO TAKE A PRACTICE EXAMINATION, A CVSE, TO SEE
12 WHERE I WOULD BE -- TO SEE WHERE I WOULD POTENTIALLY
13 TEST FROM OR TEST AT IF I WAS TO TAKE THE USMLE WITHIN
14 THAT WEEK.

15 AS WE CAN SEE HERE, THIS IS DOCUMENT --
16 EXHIBIT, SORRY PX 53. WE CAN ZOOM IN ON IT. OH, SORRY.

17 SO WE CAN SEE HERE IT'S THE DATE. WE
18 HAVE MY NAME THERE. AND THEN WE ALSO SEE THE DATE WAS
19 FEBRUARY THE 14TH, 2022. ONLY DAYS BEFORE I WAS TO SIT
20 TO TAKE THE USMLE STEP EXAMINATION FOR THE VERY FIRST
21 TIME.

22 AND AS YOU CAN SEE HERE ON THIS DOCUMENT,
23 I LOOKED AT IT AND I SAID OH WOW, I MADE A 212 ON THE
24 EXAM SO EVEN THOUGH I WAS DENIED THESE ACCOMMODATIONS, I
25 AM GOING TO GO AHEAD AND TAKE THE EXAMINATION ANYWAY. I

1 WAS -- YOU KNOW, I WAS ENCOURAGED TO GO AHEAD AND DO
2 THIS BY THOSE WHO HAD KNOWN HOW LONG I WAS STUDYING AND
3 THINGS BUT I WON'T TALK ABOUT THAT.

4 SO I SAW THAT THIS IS CLEARLY A PASSING
5 SCORE AND IT WOULD SAY, IF WE CAN SCROLL -- I'M SORRY
6 LET'S SEE. OKAY. YES.

7 SO IF WE SEE THE LINE WHERE IT SAYS, "WE
8 PARTICIPATE," IN THE HIGHLIGHTED AREA THERE.

9 ON THIS SAME DOCUMENT IT SAYS -- YOU CAN
10 -- YES.

11 SO WE PARTICIPATE -- "WE ANTICIPATE THAT
12 YOUR ACTUAL PERFORMANCE ON THE STEP 1 WILL FALL IN THE
13 RANK FROM A 202 THROUGH A 228, ABOUT TWO-THIRDS OF THE
14 TIME. THIS RANGE IS BASED ON STUDENTS WHO TOOK THE
15 CBSSA WITHIN ONE WEEK BEFORE TAKING STEP 1 EXAMINATION."

16 SO IF WE CAN SCROLL BACK UP FROM HERE.
17 AND ACTUALLY, I THINK I'VE KIND OF MADE MY POINT HERE,
18 WHICH WAS THE REASON WHY I DECIDED TO GO AHEAD AND SIT
19 FOR THE EXAM.

20 DR. KITCHENS: AND I WOULD LIKE FOR THIS
21 I WOULD LIKE TO ENTER THIS EXHIBIT INTO THE RECORD, PX
22 53?

23 MS. MEW: NO OBJECTION.

24 THE COURT: PX 53 IS ADMITTED.

25 (PLAINTIFF EXHIBIT 53 IS ADMITTED INTO

1 EVIDENCE.)

2 DR. KITCHENS: YES.

3 AND SO WHEN I -- AND WHAT I WOULD LIKE TO

4 ACTUALLY SHOW ON THIS -- ON THIS DOCUMENT --

5 IF I CAN PULL UP EXHIBIT NUMBER PX 76,

6 PLEASE?

7 AND LET'S SEE. THERE WE ARE.

8 SO PX 76 THIS WAS FILED -- WAS FILED

9 THROUGHOUT LITIGATION. AND WHAT THIS DOCUMENT IS, AND

10 ITS KIND OF BLURRY BECAUSE IT HAS THE STAMP FROM THE

11 COURT UP THERE.

12 WHAT THIS IS, IS AN EXAMPLE. AND

13 ACTUALLY AN ACTUAL TEST QUESTION FROM THE NBME'S CBSSA

14 ASSESSMENT AND -- TO GIVE YOU WHAT IT LOOKS LIKE.

15 SO YOU CAN SEE HERE THAT -- AND WHEN I

16 TOOK THE EXAM BECAUSE THEY SAID THIS IS SUPPOSED TO HELP

17 REPRESENT THE ACTUAL EXAM BY -- I TOOK IT AT STANDARD

18 PACE TIMED MEANING TIMED, HERE IN MY HOME OFFICE AND

19 THESE WERE THE EXAMS THAT -- THE TYPE OF QUESTIONS.

20 THEY ARE ONE SENTENCE QUESTIONS. THE

21 PATIENT WHOSE CARDIAC FUNCTION ILLUSTRATED MOST LIKELY

22 HAS WHICH OF THE FOLLOWING?

23 THIS HERE, FOR ME, WAS NOT AS BAD BECAUSE

24 IT WASN'T AS TAXING ON MY -- THE MENTAL PSYCHE FOR ME --

25 FOR MYSELF BECAUSE IT WASN'T SO MUCH READING AND SO MUCH

1 COMPREHENSION THAT I WOULD HAVE TO DIFFERENTIATE OF
2 WHETHER OR NOT THIS WAS THE CORRECT ANSWER FOR IT.

3 IT WAS, DO YOU KNOW THE ANSWER OR DO YOU
4 NOT KNOW THE ANSWER. AND IF YOU CAN SCROLL DOWN.
5 HERE'S JUST ANOTHER SAMPLE AND QUESTION. YOU CAN SEE
6 THAT IT'S NOT THAT MUCH -- OR, IT'S NOT THAT INTENSE OF
7 READING. ITS REALLY TESTING YOU ON YOUR KNOWLEDGE, DO
8 YOU KNOW THE INFORMATION OR DO YOU NOT KNOW THE
9 INFORMATION. AND THAT'S REALLY ALL I REALLY NEED TO SAY
10 ABOUT THIS PARTICULAR DOCUMENT HERE, AND I WOULD LIKE
11 FOR IT TO BE ENTERED INTO -- EXCUSE ME, ENTERED INTO THE
12 RECORD AS PX 76?

13 AND SO AFTER TAKING.

14 THE COURT: WAIT A MINUTE, DR. KITCHENS.

15 MS. MEW, DID YOU HAVE ANY OBJECTION TO
16 THAT?

17 MS. MEW: I AM THINKING ABOUT IT, YOUR
18 HONOR, BECAUSE IT'S JUST TWO PAGES BUT NOTING THAT, NO,
19 I DON'T HAVE ANY OBJECTIONS.

20 THE COURT: ADMITTED, PX 76.

21 (PLAINTIFF EXHIBIT 76 IS ADMITTED INTO
22 EVIDENCE.)

23 DR. KITCHENS: SO FOR THIS PARTICULAR --
24 SO I MOVED ON AND I DECIDED -- I TOOK THE EXAMINATION
25 AFTER PASSING THIS CBSSA AND I RECEIVED A REALLY FAILING

1 SCORE ON THERE.

2 IF WE CAN PULL UP JOINT EXHIBIT 09?

3 AND THIS HERE IS A DOCUMENT OF MY ACTUAL
4 USMLE STEP 1 EXAMINATION THAT WAS GIVEN ON THE TEST DATE
5 OF FEBRUARY 25TH, AND LET IT BE REMINDED, I JUST WOULD
6 RATHER REMIND THE COURT THAT MY LAST CBSSA WAS JUST A
7 DAY BEFORE THIS.

8 AND ONE WOULD PROBABLY KIND OF UNDERSTAND
9 WHY A PERSON WOULD BE VERY -- VERY DISHEARTENING TO SEE
10 SUCH A MINIMUM SCORE, WHERE THE BLACK HERE IS
11 REPRESENTED AS THE MINIMUM PASSING SCORE AND THE -- THE
12 ORANGE IS WHERE I ACTUALLY SCORED ON HERE.

13 SO IT WAS DEFINITELY MUCH MORE -- IN MY
14 EXPERIENCE THE -- THE TESTS WERE COMPLETELY DIFFERENT,
15 COMPLETELY DIFFERENT, WHEREAS ON THE CBSSA YOU HAD -- WE
16 SEE WHAT TYPE OF QUESTIONS THOSE WERE, VERSUS ON THE
17 USMLE, THEY ARE SOMETIMES PARAGRAPHS LONG, PLUS MANY
18 LAPS FOR ONE QUESTION.

19 SO WHEN I WAS TAKING THE EXAM THE -- IT
20 TOOK SO MUCH MORE CONCENTRATION FOR ME ON THIS
21 EXAMINATION TO THE POINT WHERE I DIDN'T EVEN REALIZE
22 THAT MY SCORE WOULD HAVE BEEN SO LOW AND TO THE POINT
23 WHERE I THOUGHT FOR A MOMENT, FOR ACTUALLY QUITE SOME
24 TIME, THAT I EVEN HAD TAKING AN ENTIRE EXTRA 40
25 QUESTIONS AND THIS IS SOMETHING THAT I WROTE TO THE NBME

1 SAYING THIS -- OR THAT I -- YES, ACTUALLY, AT THE TIME I
2 HAD MY WIFE WRITE THIS LETTER TO THEM, BECAUSE I WAS
3 LIKE WAIT A SECOND, THIS CANNOT BE RIGHT.

4 I TOOK SO MANY MORE. BUT FOR THE FACT --
5 WHAT THIS SHOWS FOR ME, AND EVEN AFTER TALKING WITH MY
6 WIFE ABOUT IT, IT SHOWED FOR US -- AND HERE IS THE
7 EXHIBITS HERE, SORRY, EXHIBIT J9, AND J -- PX 53, I AM
8 SORRY.

9 SO WE -- I THINK SHE PULLED THEM UP
10 SIDE-BY-SIDE FOR -- FOR THE COURT'S CONVENIENCE.

11 AND WHAT THIS SHOWED WAS THAT I WAS
12 COMPLETELY NOT ABLE TO FOCUS AS I SHOULD HAVE BEEN IF I
13 WOULD HAVE BEEN ABLE TO RECEIVE THOSE ACCOMMODATIONS TO
14 THE POINT WHERE I WOULD EVEN GO AS TO PUT MY WIFE'S
15 REPUTATION ON THE LINE AND TELL HER THAT I HAVE TAKEN AN
16 ENTIRE 40 EXTRA QUESTIONS COMPARED TO EVERYONE ELSE.

17 AND WE CAN TAKE THOSE EXHIBITS DOWN,
18 THERE. THANK YOU.

19 MS. MEW: DR. KITCHENS, DO YOU WANT TO
20 INTRODUCE YOUR REPORT.

21 THE COURT: YOU WERE ASKING THE QUESTION
22 I WAS.

23 DR. KITCHENS: YES, JUDGE, I WOULD LIKE
24 TO ENTER IN JX 09 INTO THE RECORD.

25 MS. MEW: NO OBJECTION.

1 THE COURT: ADMITTED.

2 (PLAINTIFF JOINT EXHIBIT 09 IS ADMITTED
3 INTO EVIDENCE.)

4 DR. KITCHENS: AND SO WHEN I WAS LOOKING
5 AT THESE DIFFERENT THINGS, I JUST REALLY DID NOT
6 UNDERSTAND THE DISCONNECT. AND GOING THROUGH THE
7 LITIGATION AND THINGS OF THAT NATURE, I WAS PROVIDED
8 WITH A DOCUMENT OF JX 14.

9 AND THIS -- FOR TIME SAKE, WHILE SHE IS
10 DOING THAT I WILL EXPLAIN THE DOCUMENT, IF THAT'S OKAY
11 WITH THE COURT?

12 THE COURT: YES.

13 DR. KITCHENS: OKAY. SO THIS PARTICULAR
14 DOCUMENT, JX 14, WILL GIVE A TIME REPORT OF HOW I
15 ACTUALLY DID ON THE EXAM, IT WILL ALSO TALK ABOUT HOW
16 LONG -- I'M SORRY YOU CAN SCROLL THROUGH -- HOW LONG
17 AMOUNT OF TIME THAT I SPENT ON THE EXAMINATION, ALL OF
18 THESE TYPE -- THESE EXPLANATIONS HERE, BECAUSE FOR
19 MYSELF, I REALLY COULD NOT UNDERSTAND WHAT WAS THE ISSUE
20 HERE OUTSIDE OF THE OBVIOUS, THAT I COULD NOT BE ABLE TO
21 READ AS MUCH OF THIS INFORMATION AND RETAIN THIS
22 INFORMATION TO BE ABLE TO ANSWER THE ANSWER ON MY -- ON
23 THE MERITS OF MY EDUCATION AND KNOWLEDGE VERSUS CAN I
24 REMEMBER WHAT I JUST READ HERE AND MOVE ON.

25 AND WITH THAT, I WOULD LIKE TO PUT THIS

1 EXHIBIT INTO THE RECORD, JX 14?

2 MS. MEW: NO OBJECTION.

3 DR. KITCHENS: SO I WANTED TO -- OH,
4 SORRY.

5 THE COURT: SORRY. I JUST WANTED TO SAY
6 ON THE RECORD THAT JX 14 IS ADMITTED.

7 (PLAINTIFF JOINT EXHIBIT 14 IS ADMITTED
8 INTO EVIDENCE.)

9 THE COURT: CAN I GET -- DR. KITCHENS, I
10 SO THAT I SAVE TIME TO COMING BACK TO IT, BUT ABOUT JX
11 14, COULD YOU JUST EXPLAIN -- GIVE ME A LITTLE MORE
12 EXPLANATION HOW TO INTERPRET THAT DOCUMENT, LIKE WHAT IS
13 WHAT ON IT?

14 DR. KITCHENS: YES, SIR. LET'S BRING UP
15 JX 14.

16 MS. MEW: YOUR HONOR?

17 THE COURT: SORRY, MS. MEW.

18 MS. MEW: I'M SORRY, BUT I JUST -- THIS
19 WAS SOMETHING THAT WE PRODUCED NOT THAT DR. KITCHENS
20 PRODUCED. THIS IS AN NBME DOCUMENT AND WE WILL HAVE A
21 WITNESS TESTIFYING ABOUT WHAT IT MEANS BUT --

22 THE COURT: OH. I JUST WANTED TO
23 UNDERSTAND ABOUT THE HEADINGS AND ABBREVIATIONS, BUT I
24 WILL LEAVE THAT UNTIL LATER. THAT'S FINE.

25 DR. KITCHENS: YES, JUDGE.

1 THE COURT: OKAY.

2 DR. KITCHENS: SO I CONTINUE TO -- AT
3 THIS POINT, AFTER THE FAIL I CONTINUED TO WORK HARD,
4 CONTINUED TO STUDY FOR THE EXAMINATION. AND IT RAN
5 THROUGH MY MIND THAT YOU KNOW WHAT, I NEED TO APPLY FOR
6 THESE ACCOMMODATIONS AGAIN BUT I DO NOT HAVE ANY MORE
7 DOCUMENTATION AND I -- LORD KNOWS THAT I CANNOT AFFORD
8 THESE EVALUATIONS OR -- YOU KNOW, I JUST DIDN'T HAVE IT.

9 SO I DIDN'T WANT TO WASTE MY TIME OR
10 THEIR TIME. SO I CONTINUED TO STUDY AND I RE TOOK AN
11 EXAMINATION, WHICH IS EXHIBIT PX 54. PX 54, ON MARCH
12 THE 21ST, 2022. AND WHEN I TOOK THIS EXAM, THE CBSSA,
13 AGAIN, THIS EXAMINATION SHOWS THAT -- SAYS MY NAME HERE,
14 IT SHOWS THE DATE HERE, THAT MY TOTAL EQUATED PERCENT
15 SCORE WAS 77 PERCENT, WHICH WE CAN SEE STILL FAILED IN
16 THE LINES OF -- FROM THE PREVIOUS CBSSA THAT I TOOK BACK
17 IN FEBRUARY.

18 SO WITH HAVING THIS DOCUMENTATION AGAIN,
19 AND THE WORDING SAYS RIGHT ABOVE IT, BASED ON THE
20 PERFORMANCE OF YOUR CBSSA, YOUR ESTIMATE PROBABILITY OF
21 PASSING STEP 1 IF YOU TEST WITHIN ONE WEEK IS
22 99 PERCENT. AND I KNOW THAT THIS IS -- AND I WANTED TO
23 REALLY LEAN IN ON THIS BECAUSE THIS IS SOMETHING THAT
24 REALLY -- I COULD NOT REALLY UNDERSTAND WHY THERE IS
25 SUCH A BIG DISCONNECT BETWEEN THE TWO, OUTSIDE OF

1 OBVIOUSLY THE READING AND I KNOW THAT THAT WAS -- YOU
2 KNOW, WOULD BE A QUESTION THAT I WOULD LIKE FOR THE
3 COURT TO KNOW, WHY DID I KEEP TAKING THE EXAMS AFTER THE
4 FACT.

5 AND WITH THAT, I WOULD LIKE TO ADMIT
6 EXHIBIT PX 54 INTO THE RECORD?

7 MS. MEW: YOUR HONOR, I AM GOING TO
8 OBJECT BECAUSE IT LOOKS LIKE IT'S NOT COMPLETE. DO YOU
9 SEE HOW THERE'S -- BUT I THINK THAT WHAT I WOULD
10 SUGGEST IS THAT WE -- I AM SURE WE HAVE A COPY -- A
11 COMPLETE COPY OF THIS. SO MAYBE IF WE CAN HOLD OFF ON
12 ADMITTING THIS ONE WE WILL TRY TO GET A BETTER COPY OF
13 IT, A COMPLETE COPY.

14 THE COURT: OKAY. I DON'T WANT TO LOOSE
15 THE THREAD ON THE RULING SO I AM GOING TO ADMIT IT WITH
16 THE PROVISIO IT IS INCOMPLETE AND I WILL LEAVE IT TO YOU
17 TWO TO MAKE SURE THAT THE COPY THAT EVENTUALLY GETS
18 FILED IS COMPLETE.

19 (PLAINTIFF EXHIBIT 54 IS ADMITTED INTO
20 EVIDENCE.)

21 DR. KITCHENS: FOR TIME SAKE, YOUR HONOR,
22 I THINK THAT I HAVE REALLY TALKED MORE -- ENOUGH ABOUT
23 THE REASONS WHY I WENT AHEAD AND TOOK THESE EXAMS AND
24 INSTEAD OF GOING -- WASTING COURT'S TIME WITH GOING
25 THROUGH EVERY SINGLE DOCUMENT FOR STEP 1, STEP 2, I WILL

1 -- I WOULD LIKE TO GO AHEAD AND EXPRESS WHY I FEEL THAT
2 THE EXPUNGEMENT OF MY TRANSCRIPT, IF THAT'S OKAY FOR ME
3 TO SPEAK ABOUT, OR NO, IN MY EXPERIENCE?

4 THE COURT: WELL, YES OR NO. SO LET ME
5 GIVE YOU GUIDANCE. JUST THE TESTIMONY THAT IS GOING TO
6 BE APPROPRIATE HERE FOR YOU AS THE FACT WITNESS, NOT AS
7 THE -- YOU KNOW, THE ARGUER OR THE REPRESENTER OF
8 YOURSELF, IS THINGS THAT YOU PERCEIVED, THINGS THAT
9 HAPPENED TO YOU. WELL, LIKE WHAT YOU HAVE BEEN DOING
10 FOR THE LAST HOUR OR SO IN YOUR TESTIMONY WHERE YOU WERE
11 DISCUSSING DECISIONS THAT YOU MADE, REASONS YOU MADE
12 DECISIONS, THINGS THAT YOU RECEIVED, YOU KNOW THOSE
13 TYPES OF FACTS; RIGHT?

14 SO IF THERE IS SOMETHING IN THAT SAME
15 CATEGORY OF INFORMATION THINGS THAT YOU PERCEIVE THAT IS
16 RELEVANT TO THE EXPUNGEMENT QUESTION THAT IS FINE, BUT I
17 DON'T NEED TO HEAR ARGUMENT ON EXPUNGEMENT RIGHT NOW;
18 OKAY?

19 DR. KITCHENS: YES, SIR.

20 SO ONE THING THAT I WOULD SAY THEN TO
21 REVISE FROM GOING DOWN THAT ROUTE IS, WHEN I -- WHEN I
22 TOOK MY EXAMS AND WHEN THE SCORES CAME BACK, AND I
23 OPENED THEM, EVERYTHING WITHIN ME LITERALLY SANK AND I
24 FELT AS IF I WAS -- HONESTLY, I CALLED MYSELF DUMB
25 SEVERAL TIMES. I TOLD MYSELF THAT AND I CONVINCED

1 MYSELF THAT I WAS NOT WORTHY TO BE A DOCTOR.

2 I TOLD MYSELF AND THEN THE STRESSORS CAME
3 IN MY HEAD, IT WAS HOW IN THE WORLD AM I GOING TO PAY
4 BACK THESE LOANS? I AM NEVER GOING TO GET INTO A
5 RESIDENCY PROGRAM BECAUSE EVERYBODY ALREADY KNOWS THAT,
6 ONE, I HAVE EVERYTHING GOING AGAINST ME.

7 I AM AN IMG. THERE IS SO MUCH
8 DOCUMENTATION THAT SHOWS THAT THE PROPORTIONS OR THE
9 PERCENTAGE OF THOSE WHO GO TO SCHOOL IN THE STATES
10 MATCHING INTO PROGRAMS VERSUS THOSE THAT ARE IMGs WHO
11 MATCH INTO CERTAIN PROGRAMS AND HOW MANY PEOPLE APPLY
12 FOR EACH ONE AND HOW MANY ARE ADMITTED FOR EACH ONE.

13 SO THESE THINGS ARE GOING THROUGH MY HEAD
14 AND IT'S BRINGING ON ALL OF THESE PARTICULAR STRESSORS
15 AND IT KEPT MAKING ME FEEL AS IF SOMETHING IS WRONG WITH
16 ME. THAT THE THING THAT I HAVE LITERALLY BEEN TRYING TO
17 HIDE FROM EVERYONE, NO ONE IN MY FAMILY OUTSIDE OF MY
18 MOM EVEN KNOWS THAT I HAVE ADHD. THE SAME WAY THEY
19 DON'T KNOW ABOUT THIS TRIAL TODAY, EXCEPT FOR MY MOTHER
20 AND MY WIFE.

21 THESE THINGS HERE ARE -- THEY PLAY A BIG
22 IMPACT. AND IT'S NOT THAT I AM WANTING TO -- TO SAY
23 THAT I WANT -- I JUST WANT THESE ACCOMMODATIONS TO CHEAT
24 THE EXAM AND TO GET AHEAD OF EVERYBODY ELSE. NO. THESE
25 ARE THINGS THAT CAN BE SEEN AND AFTER THE EXAMS OF GOING

1 INTO THE -- GOING TO MY PSYCHIATRIST, TALKING TO MY
2 THERAPIST ABOUT THE SITUATION, AND HOW THIS IS REALLY
3 AFFECTED ME PERSONALLY AND SPIRITUALLY AND IT ALSO --
4 WHEN I WAS DENIED THE SECOND TIME FOR THE
5 ACCOMMODATIONS, AND I DID SUBMIT THE EXACT SAME
6 DOCUMENTATION THE SECOND TIME I APPLIED FOR THE
7 ACCOMMODATIONS BECAUSE I JUST DID NOT HAVE IT.

8 AND YOU KNOW, AND I KEPT THINKING TO MY
9 -- AND I KEPT TELLING MY WIFE, WHAT IS WRONG WITH THESE
10 PEOPLE? WHY CAN THEY -- WHY CAN THEY NOT SEE THAT IF I
11 HAVE THE DOCUMENTATION WHY WOULD I NOT GIVE IT TO YOU?

12 WHY WOULD I HURT MYSELF AND NOT -- YOU
13 KNOW, AND NOT GIVE YOU THE DOCUMENTATION? IF I CAME
14 FROM A FAMILY THAT HAD MONEY OR IF I HAD THE RESOURCES
15 THAT HAD MONEY TO HAVE THE EVALUATIONS IT WOULD BE NO
16 PROBLEM. I WOULD HAVE SAID OKAY. HOW MANY EVALUATIONS
17 WOULD YOU LIKE FOR ME TO HAVE?

18 I WOULD GO AND GET THEM BUT THAT IS
19 SOMETHING THAT WAS NOT IN MY REALM THAT I CAN -- IN MY
20 GRASP THAT I COULD DO. AND I WAS TRYING MY BEST TO --
21 TO REALLY TRY TO UNDERSTAND WHY. AND IT MADE ME LOSE
22 FAITH IN THE NBME. IT MADE MY BELIEVE ALL OF THE THINGS
23 THAT ALL OF THESE -- YOU KNOW, THAT WE AS STUDENTS AND
24 MEDICAL GRADUATES TALK ABOUT.

25 YOU KNOW, IT'S NOT JUST ONE PERSON OR TWO

1 PEOPLE, YOU ARE TALKING ABOUT HUNDREDS OF THOUSANDS --
2 NOT HUNDREDS OF THOUSANDS, BUT HUNDREDS OF PEOPLE OR
3 MORE THAT ARE TALKING ABOUT THEIR REPRESENTATION OF
4 INJUSTICE WHEN IT COMES TO ACCOMMODATIONS AND THE ONLY
5 THING THAT THIS DID FOR ME WAS SOLIDIFY THAT.

6 SO WHY WOULD I WASTE MY TIME ON TAKING --
7 PAYING FOR EVALUATIONS AFTER THE EVALUATIONS AND THEN I
8 STARTED DOING EVALUATIONS WHEN I HAD TO PAY \$1000 PER
9 EXAM. THAT TAKES A LOT OF MONEY FOR ME TO SAVE UP -- TO
10 SAVE UP TO SAY WHAT IS MOST IMPORTANT?

11 I HAVE A TIME FRAME LINGERING OVER ME ALL
12 THE TIME. I HAVE FAMILY MEMBERS THAT ARE SAYING, HEY,
13 WHERE ARE YOU GOING TO -- ARE YOU IN RESIDENCY? WHICH
14 RESIDENCY PROGRAM DID YOU MATCH IN? AND TO BE ABLE TO
15 -- NOT EVEN BE ABLE TO GIVE THEM AN ANSWER OR TELL THEM
16 THAT, YES, I GRADUATED BUT I HAVEN'T MATCHED INTO
17 RESIDENCY PROGRAMS.

18 THOSE TYPE OF THINGS THERE LINGER ON A
19 PERSON. AND THEN I STARTED DOING, YOU KNOW, RESEARCH
20 AND THINGS ON THE NBME TO SAY LIKE, ON -- LIKE PEOPLE ON
21 REDDIT THAT'S GIVEN THEIR PERSONAL TESTIMONIES AND
22 THINGS OF THAT NATURE, SAYING LISTEN, I HAVE APPLIED FOR
23 ACCOMMODATIONS, SUBMITTED ALL OF THESE THINGS, THEY EVEN
24 HAD SCREENSHOTS OF ALL OF THE DOCUMENTATIONS ON REDDIT,
25 AND STILL GOT A DENIAL.

1 SO IN MY HEAD I AM SAYING, YOU KNOW WHAT,
2 DO I PAY MONEY AND TAKE A GAMBLE ON ACCOMMODATIONS --
3 OR, ON EVALUATIONS TO PROVE TO THEM, OR DO I CONTINUE TO
4 TRY MY BEST AND CONTINUE TO WORK HARD AND SACRIFICE MANY
5 HOLIDAYS, SACRIFICE MANY TRIPS AND TO BE HERE IN MY
6 OFFICE ALL THE TIME TO STUDY BECAUSE, AGAIN, I KNEW FOR
7 A FACT THAT EVEN ON THE ECFMG'S WEBSITE, WHICH THE ECFMG
8 IS AN ENTITY THAT WORKS -- AND MS. MEW, CORRECT ME IF
9 I'M WRONG -- THAT IT -- THAT IT WORKS -- AND JUST FOR
10 CLARIFICATION THAT THEY ARE LIKE AN ENTITY OF THE NBME
11 THAT WORKS -- NO.

12 THEY ARE THE -- EXCUSE ME, THEY ARE THE
13 -- DON'T TELL ME. IT IS THE DEAN'S OFFICE. THE DEAN'S
14 OFFICE FOR INTERNATIONAL GRADUATES; RIGHT? AND SO --
15 YES?

16 MS. MEW: I DON'T KNOW.

17 DR. KITCHENS: SO THIS IS THE LANGUAGE
18 THAT THEY GAVE. SORRY -- I DIDN'T HEAR YOU JUDGE.

19 MS. MEW: YOU'RE ON MUTE, YOUR HONOR.

20 THE COURT: I THINK -- DR. KITCHENS, I
21 THINK MS. MEW DOES NOT WANT TO TESTIFY WHILE YOU ARE
22 TESTIFYING. SO PROCEED.

23 DR. KITCHENS: I'M SO SORRY.

24 BUT AGAIN, THE ECFMG IS A HUB WE HAVE TO
25 GO THROUGH. I CANNOT CALL NBME -- THE ACTUAL NBME

1 OFFICE AND ASK FOR THEM TO HELP ME WITH SPECIFIC
2 DOCUMENTATION AND THINGS OF THAT NATURE. THEY ARE GOING
3 TO REFER ME TO THE ECFMG AND THEN THEY WILL BE THE
4 MIDDLE PERSON TO -- TO WORK WITH THE NBME, AS IS MY
5 UNDERSTANDING OF IT, WHAT I WAS TOLD DURING MY
6 DEPOSITION.

7 AND ON THE NBME'S WEBSITE, IT IS VERY
8 CLEAR THAT THEY STATE THAT YOU ONLY HAVE SEVEN YEARS,
9 SEVEN YEARS TO COMPLETE YOUR -- TO COMPLETE ALL OF YOUR
10 EXAMINATIONS FOR CERTIFICATION.

11 SO NOW, YOU HAVE SEVEN YEARS LINGERING
12 OVER YOU -- OVER ME. THEN I HAD -- FROM THE ECFMG
13 ENTITY. THEN I HAVE MY FAMILY LEANING -- YOU KNOW,
14 LINGERING OVER ME. THAT TYPE OF PRESSURE. AND THEN I
15 ALSO HAD THE PRESSURE OF I AM A HUSBAND. I AM -- THIS
16 WAS NOT IN OUR PLAN FOR ME TO PROVIDE FOR MY WIFE AND
17 NOW I CAN'T EVEN DO THAT BECAUSE I CAN'T MAKE IT INTO A
18 RESIDENCY.

19 AND NOW I FEEL LIKE A FAILURE AND -- TO
20 HAVE TO EVEN TELL HER THAT I FAILED. AND SO I WANTED TO
21 KEEP PUSHING. AND THEN ALSO, I AM LOOKING AT ANOTHER
22 STRESSOR OF -- RESIDENCY PROGRAMS ACROSS THE BOARD
23 NOTICE HOW LONG THAT GAP YEAR IS BETWEEN WHEN YOU
24 GRADUATED YOUR CLINICALS OF WHEN YOU -- UNTIL YOU HAVE
25 STARTED YOUR RESIDENCY PROGRAM BECAUSE THEY DON'T WANT

1 TO FEEL LIKE THEY HAVE TO RE TEACH YOU AND YOU FORGOTTEN
2 ALL OF THE THINGS BECAUSE WHEN YOU DON'T USE IT YOU LOSE
3 THAT PARTICULAR LITTLE DETAILS.

4 SO I NEEDED TO MAKE SURE THAT I KEPT ON
5 TOP OF THAT AND KEPT STUDYING AS HARD AS I COULD AND
6 KEPT PERSEVERING TO TRY TO TAKE THIS EXAM AND WHEN --
7 JUDGE, WHEN I DID NOT HAVE ANY OTHER CHOICE, ANY OTHER
8 CHOICE, I HAD TO PURSUE LEGAL ACTION. AND I HAD TO --
9 AND I DIDN'T HAVE A CHOICE BUT TO DO IT PRO SE. I
10 PROMISE ANYBODY, THIS IS NOT WHAT I WOULD CONSIDER A FUN
11 TIME. IT'S JUST NOT. I CAN THINK OF A MILLION OTHER
12 WAYS I COULD BE SPENDING MY DAY.

13 AND THESE TYPE OF THINGS FOR ME -- I
14 DON'T TAKE IT LIGHTLY IS WHAT I AM GETTING AT, AND WHEN
15 I TALKED TO MY WIFE SHE ENCOURAGED ME -- SHE SAID, NO,
16 DO NOT TRY TO SUE THEM. YOU ARE GOING TO WASTE YOUR
17 TIME. SHE TOLD ME THAT. HER MENTOR EVEN SAID THE SAME
18 THING. I CALLED SEVERAL DIFFERENT LAW OFFICES. THEY
19 WOULD NOT EVEN TAKE MY CASE EVEN THOUGH I JUST WANTED TO
20 SEE IF THEY WOULD DO IT PRO BONO, BUT THEY WOULD TELL
21 ME, NO, I DON'T THINK THAT THAT'S SOMETHING WE WOULD BE
22 ABLE TO PARTICIPATE.

23 I CALLED FLORIDA. I CALLED PEOPLE IN
24 YOUR AREA, IN PHILADELPHIA, TO TRY TO FIND A LAWYER. SO
25 WHEN I DIDN'T HAVE NO OTHER CHOICE, I CAME FROM MY HOUSE

1 BECAUSE I HAD NO UNDERSTANDING OF HOW THIS PROCESS
2 WORKS, AND I DROVE FROM KENTUCKY, FROM RICHMOND,
3 KENTUCKY, 12 HOURS TO YOUR OFFICE AND HAND DELIVERED THE
4 DOCUMENTATION TO FILE THE ORIGINAL COMPLAINT BEFORE THE
5 AMENDED BECAUSE I DIDN'T KNOW THAT I COULD DO IT ONLINE.
6 I HAD NO IDEA.

7 SO I WANT IT TO BE KNOWN THAT I AM NOT
8 JUST A PERSON HERE THAT IS TRYING TO TAKE ADVANTAGE. I
9 AM DOING EVERYTHING THE RIGHT WAY TO BE A PART OF
10 SOMETHING THAT I FEEL I -- TO BE A PART OF THIS SOCIETY
11 AND PULL MY OWN WEIGHT.

12 AND WITH THAT BEING SAID, YOUR HONOR, I
13 HAVE NO FURTHER STATEMENTS TO SAY.

14 THE COURT: OKAY. ALL RIGHT. THANK YOU
15 FOR THAT, DR. KITCHENS. SO NOW, AS YOU KNOW, MS. MEW
16 WILL HAVE THE OPPORTUNITY TO CROSS-EXAMINE YOU.

17 JUST AS REMINDER, YOU'VE PICKED THIS UP I
18 AM SURE, BUT THE WAY WE WILL DO THIS, THE WAY WE DO THE
19 CROSS EXAMINATION, AGAIN, BECAUSE IT'S A BENCH TRIAL
20 IT'S LITTLE MORE FLEXIBLE THAN USUAL BUT IT'S STILL
21 REALLY HELPFUL -- IT'S BOTH HELPFUL TO ME AND ITS
22 APPROPRIATE, YOU KNOW, WITH REGARDS TO THE DEFENDANT'S
23 RIGHTS IN THE CROSS EXAMINATION, DO YOUR BEST TO ANSWER
24 THE QUESTIONS THAT ARE BEING ASKED OF YOU AND STAY
25 FOCUSED AND JUST ANSWER THE QUESTIONS THAT ARE BEING

1 ASKED OF YOU.

2 I WILL GIVE YOU AN OPPORTUNITY FOR
3 REDIRECT. SO IF, FOR EXAMPLE, YOU ARE ASKED A QUESTION
4 AND YOU FEEL AS THOUGH, YOU KNOW, YOU CAN ANSWER THE
5 QUESTION DIRECTLY BUT THERE IS MORE YOU WOULD LIKE TO
6 SAY, I WOULD ASK THAT YOU HOLD THE ADDITIONAL POINTS FOR
7 YOUR REDIRECT; OKAY?

8 DR. KITCHENS: YES. HOPEFULLY I
9 REMEMBER. BUT YES, SIR.

10 THE COURT: IF IT'S -- IN THE CROSS
11 EXAMINATION, MS. MEW IS TRYING TO MAKE SOME POINTS.
12 THAT'S HER RIGHT IN BUILDING HER CASE AND IT'S VERY
13 HELPFUL TO -- YOU KNOW, WHAT SHE IS TRYING TO DO ASK
14 SOME QUESTIONS. SHE'S ENTITLED TO GET DIRECT ANSWERS TO
15 HER QUESTIONS.

16 I KNOW YOUR -- I KNOW THAT SITTING HERE
17 THAT YOU ARE A PASSIONATE PERSON WITH A LOT TO SAY BUT
18 YOU WILL -- THAT'S WHY I WANT TO MAKE SURE THAT I POINT
19 OUT YOU WILL HAVE AN OPPORTUNITY TO REDIRECT WHERE YOU
20 CAN MAKE FURTHER STATEMENTS THAT RESPOND TO THINGS IN
21 THE EXAMINATION YOU FEEL LIKE YOU DIDN'T -- THAT WEREN'T
22 REALLY COVERED BY THE NARROW QUESTION YOU WERE BEING
23 ASKED; OKAY?

24 DR. KITCHENS: UNDERSTOOD, JUDGE.

25 THE COURT: ALL RIGHT. AND IF MS. MEW IS

1 -- I AM GOING TO LET -- I AM NOT GOING TO TRY TOO
2 INTERFERE TOO MUCH BUT IF MS. MEW FEELS YOUR RESPONSES
3 ARE NOT FAIR, GIVEN THE GROUND RULES I JUST LAID OUT,
4 SHE IS GOING TO ASK ME TO SAY SOMETHING TO YOU AND I
5 WILL IF I HAVE TO; OKAY?

6 DR. KITCHENS: UNDERSTOOD, JUDGE.

7 THE COURT: ALL RIGHT. GO AHEAD, MS.

8 MEW.

9 CROSS EXAMINATION

10 BY MS. MEW:

11 Q. GOOD AFTERNOON, DR. KITCHENS.

12 A. GOOD AFTERNOON, MS. MEW.

13 Q. I WANTED -- I HAD A FOLLOW-UP QUESTION FROM
14 YESTERDAY.

15 HOW DO YOU KNOW DR. PULLINS?

16 A. YES SO I MET DR. PULLINS A COUPLE OF YEARS AGO
17 AT CHURCH WHEN I WAS LIVING IN ILLINOIS.

18 Q. DO YOU CONSIDER HIM TO BE A FRIEND OF YOURS?

19 A. I WOULD CONSIDER HIM TO BE A MENTOR OF MINE,
20 YES.

21 Q. DO YOU AND YOUR WIFE ARE IN A -- BEFORE -- I AM
22 AFRAID THESE ARE GOING TO SOUND -- THIS IS IN RELATION
23 TO IF WE HEARD THE TESTIMONY EARLIER FROM DR. SHEPHERD,
24 ABOUT MULTIPLE -- HAVING -- SHOWING SYMPTOMS OF MULTIPLE
25 IMPAIRMENT BEING PART OF THE ADHD DIAGNOSIS. SO THIS IS

1 WHY I AM ASKING THESE QUESTIONS, DR. KITCHENS.

2 YOU AND YOUR WIFE ARE IN A HAPPILY
3 MARRIED AND POSITIVE RELATIONSHIP; CORRECT?

4 A. YES, THIS IS VERY CORRECT.

5 Q. AND YOU ARE HEAVILY INVOLVED IN YOUR CHURCH;
6 CORRECT?

7 A. I WOULD NOT SAY HEAVILY INVOLVED BUT I AM -- I
8 PLAYED PIANO ON SUNDAY MORNINGS FOR MY CHURCH.

9 Q. AND IN HIGH SCHOOL YOU PLAYED ON THE BASEBALL
10 TEAM?

11 A. YES, I PLAYED ON THE BASEBALL TEAM FOR ONE YEAR.

12 Q. YOU PARTICIPATED IN STUDENT GOVERNMENT AT BEREA;
13 CORRECT?

14 A. YES, I DID.

15 Q. IN MEDICAL SCHOOL, YOU WERE CHOSEN TO BE CLASS
16 PRESIDENT BY YOUR MEDICAL CLASSMATES; IS THAT RIGHT?

17 A. SO FOR CLARIFICATION, THAT'S ACTUALLY -- IT'S
18 NOT CLASS PRESIDENT, IT'S LIKE A REPRESENTATIVE BUT IT'S
19 SEVERAL DIFFERENT PEOPLE WHO ARE THE REPRESENTATIVES SO
20 IT JUST WASN'T ME, IT WAS ME AND TWO OTHER PEOPLE.

21 Q. YOU ALSO SERVED AS VICE-PRESIDENT OF THE SURGERY
22 CLUB?

23 A. YES, THIS IS CORRECT, FOR ONE YEAR.

24 Q. AND YOU WERE ALSO A MEMBER OF AN ADVISORY BOARD
25 IN MEDICAL SCHOOL; IS THAT RIGHT?

1 A. YES, THIS IS CORRECT. YES.

2 Q. AND FOR WORK, YOU HAVE WORKED AS A CAR SALESMAN;
3 CORRECT?

4 A. YES, WHEN I FIRST GRADUATED UNDERGRADUATE --
5 UNDERGRAD.

6 Q. AND DID THAT JOB REGULARLY YOU HAD TO INTERACT
7 WITH CUSTOMERS; CORRECT?

8 A. YES.

9 Q. AND DID YOU NOT REQUEST ANY ACCOMMODATIONS IN
10 THIS JOB; CORRECT?

11 A. NO.

12 Q. AND DO YOU YOU WERE A GOOD CAR SALESMAN, BECAUSE
13 YOU LIKE WORKING WITH PEOPLE; RIGHT?

14 A. I WOULD SAY THAT IS SUFFICIENT.

15 Q. AND THEN YOU ALSO WORKED IN STORE MANAGEMENT AT
16 KROGER; CORRECT?

17 A. YES, THIS IS CORRECT.

18 Q. AND THIS WAS FOR ABOUT TWO YEARS BEFORE YOU
19 STARTED MEDICAL SCHOOL?

20 A. YES.

21 Q. AND IN THAT JOB YOU WERE RESPONSIBLE FOR WEEKLY
22 BUDGET, INTERACTING WITH CUSTOMERS AND EMPLOYEES,
23 SENDING E-MAILS, ATTENDING MEETINGS, AND MEDIATING
24 DISCIPLINARY ACTION AGAINST EMPLOYEES; CORRECT?

25 A. THERE -- SO IN THAT PARTICULAR ASPECT, THERE --

1 BECAUSE FOR THE -- FOR THE RECORD, IT'S NOT NECESSARY
2 THAT ONE PERSON IS DOING THAT.

3 AS THE MANAGER THERE IS OTHER PEOPLE WHO
4 ARE ASSIGNED FOR THOSE TYPES OF THINGS BECAUSE IT'S NO
5 WAY THAT THE ONE PERSON CAN DO ALL OF THOSE DIFFERENT
6 THINGS. SO I WOULD HAVE HAVE TO SAY NO.

7 Q. WHEN YOU WERE WORKING AT KROGER, YOU DID NOT
8 REQUEST ANY ACCOMMODATIONS IN THAT JOB; CORRECT?

9 A. I'M NOT SURE -- NO. NO, I DID NOT.

10 Q. AND THEN YOU DID YOUR CLINICAL ROTATIONS AT TWO
11 HOSPITALS IN THE UNITED STATES AS PART OF YOUR MEDICAL
12 EDUCATION; CORRECT?

13 A. YES.

14 Q. THE ONE WAS AT JACKSON PARK HOSPITAL IN CHICAGO,
15 AND ONE WAS AT BRENTWOOD PSYCHIATRIC HOSPITAL IN
16 LOUISIANA?

17 A. CORRECT.

18 Q. AND YOU DID NOT REQUEST ANY ACCOMMODATIONS
19 DURING THOSE ROTATIONS; CORRECT?

20 A. NO. CORRECT.

21 Q. AND I THINK YOU ALSO DID A SUMMER INTERNSHIP AT
22 THE MAYO CLINIC IN CHICAGO, AND THEN ONE AT BAPTIST
23 HEALTH IN KENTUCKY?

24 A. YES. SO THOSE ARE REQUIRED BY THE UNIVERSITY.
25 THEY ARE CALLED CLERKSHIPS AND YOU ARE -- YOU HAVE TO

1 HAVE SO MANY HOURS. SO IT WAS STILL A PART OF SCHOOL
2 CURRICULUM, BUT YES, CORRECT.

3 Q. THOSE ARE MEDICAL -- SO THOSE ARE MEDICAL -- FOR
4 PART OF YOUR MEDICAL SCHOOL CURRICULUM?

5 A. YES, SO IT IS BECAUSE WE HAVE TO TURN IN A FORM
6 AT THE END, AN OFFICIAL FORM WHERE THE DOCTOR HAS TO
7 SIGN IT AND SUCH, AND THEN WE HAVE TO RETURN IT IN
8 BECAUSE WHAT THE SCHOOL IS TRYING TO AVOID IS THE
9 DISCONNECT FROM WHEN YOU HAVE SUMMER BREAK.

10 THEY DON'T WANT YOU TO FORGET THOSE
11 THINGS, ALL OF THE INFORMATION. SO YOU HAVE TO DO AT
12 LEAST FOUR WEEKS OF THAT.

13 Q. AND WHEN YOU WERE AT MAYO CLINIC AND AT BAPTIST
14 HEALTH DID YOU NOT REQUEST ANY ACCOMMODATIONS; CORRECT?

15 A. NO.

16 Q. LET'S PULL UP JX 1. WE ARE JUST GETTING STARTED
17 HERE, SO WE WILL NEED TO GET OUR FLOW GOING.

18 SO THIS DOCUMENT HAS ALREADY BEEN ENTERED
19 INTO EVIDENCE.

20 DR. KITCHENS, DO YOU RECOGNIZE THIS AS
21 YOUR ELEMENTARY SCHOOL TRANSCRIPT?

22 A. I DO.

23 Q. AND THIS IS A DOCUMENT THAT YOU ARE RELYING ON
24 IN THIS LITIGATION; CORRECT?

25 A. THIS IS CORRECT.

1 Q. DID YOU OBTAIN -- DID YOU HAVE THIS DOCUMENT
2 BEFORE THE LAWSUIT OR DID YOU OBTAIN IT AS PART OF THE
3 LAWSUIT?

4 A. IT WAS NOT IN MY POSSESSION DURING THE -- BEFORE
5 THE LAWSUIT.

6 Q. SO IT'S FAIR TO SAY YOU DID NOT PROVIDE A COPY
7 OF THIS TO NBME IN SUPPORT OF EITHER OF YOUR 2022
8 ACCOMMODATIONS REQUESTS; CORRECT?

9 A. I DID NOT KNOW THAT THIS DOCUMENT STILL EXISTED.

10 Q. BUT YOU'VE SINCE OBTAINED IT?

11 A. YES.

12 Q. IF WE LOOK AT YOUR ELEMENTARY SCHOOL TRANSCRIPT,
13 AT JX 1, FOR FIRST GRADE, FOR CONDUCT, IT REPORTS ALL
14 S'S; IS THAT CORRECT?

15 A. YES, I DO SEE THAT, THAT'S CORRECT.

16 Q. AND IS IT YOUR UNDERSTANDING THAT S MEANS
17 SATISFACTORY?

18 A. THAT IS CORRECT.

19 Q. AND IF WE LOOK DOWN THERE FOR GRADE TWO AT YOUR
20 CONDUCT SCORES, AGAIN, WE SEE FOUR S'S; CORRECT?

21 A. I'M SORRY CAN YOU REPEAT THE QUESTION?

22 Q. FOR GRADE TWO, YOUR CONDUCT SCORES THERE ARE
23 FOUR S'S; CORRECT?

24 A. CAN YOU ZOOM IN? IT'S VERY HARD FOR ME TO READ.

25 Q. YES.

1 A. THANK YOU.

2 YES, THERE ARE FOUR S'S THERE.

3 Q. AND NOW WE WILL LOOK AT JX 2. THIS IS A
4 DOCUMENT THAT IS ALREADY IN THE RECORD AS WELL.

5 DO YOU RECOGNIZE THIS AS YOUR MIDDLE
6 SCHOOL TRANSCRIPT?

7 A. I DO.

8 Q. AND THIS IS ANOTHER DOCUMENT THAT YOU ARE NOW
9 RELYING ON IN THIS LITIGATION; CORRECT?

10 A. THIS IS CORRECT.

11 Q. THIS IS NOT A DOCUMENT THAT YOU OBTAINED AND
12 SUBMITTED TO NBME IN SUPPORT OF ANY ACCOMMODATION
13 REQUEST; CORRECT?

14 A. I DIDN'T KNOW THAT THIS DOCUMENTATION EVEN
15 EXISTED. STILL EXISTED.

16 Q. AND DO YOU -- BUT YOU SINCE FIGURED THAT OUT AND
17 WERE ABLE TO OBTAIN THE DOCUMENT FOR USE IN THIS
18 LITIGATION; CORRECT?

19 A. I DID AT THE REQUEST OF NBME'S REQUEST IN
20 DISCOVERY, OTHERWISE I WOULD HAVE NEVER THOUGHT ABOUT
21 IT.

22 Q. LET'S LOOK AT JX 3. THIS IS ALSO A DOCUMENT
23 THAT IS ALREADY IN EVIDENCE.

24 AND THIS IS YOUR -- WOULD YOU LIKE US TO
25 ZOOM IN, DR. KITCHENS, SO YOU CAN SEE IT BETTER?

1 A. YES.

2 Q. THIS IS A COPY OF YOUR HIGH SCHOOL TRANSCRIPT;
3 CORRECT?

4 A. THIS IS CORRECT.

5 Q. AND THIS IS ANOTHER DOCUMENT THAT YOU ARE NOW
6 RELYING ON IN THIS LITIGATION; CORRECT?

7 A. THIS IS CORRECT.

8 Q. AND FOR WHATEVER REASON YOU DID NOT SUBMIT IT TO
9 NBME IN SUPPORT OF YOUR ACCOMMODATION REQUEST; CORRECT?

10 A. AND AGAIN, I DID NOT KNOW THAT THIS
11 DOCUMENTATION STILL EXISTED GIVEN THE TIME FRAME.

12 Q. IF WE STAY ON THIS DOCUMENT, AND SCROLL DOWN A
13 LITTLE BIT, TO WHERE THE CUMULATIVE G.P.A. IS.

14 OH, IT'S UP THERE. I WAS THINKING OF A
15 DIFFERENT DOCUMENT.

16 YOU GRADUATED HIGH SCHOOL WITH A 2.812
17 CUMULATIVE G.P.A.?

18 A. CAN YOU PLEASE ZOOM IN ON THAT? YES.

19 Q. AND YOU GRADUATED 45 OUT OF 135 STUDENTS?

20 A. YES.

21 Q. IN THE TOP THIRD OF YOUR CLASS?

22 A. I'M NOT SURE OF THE MATH.

23 Q. AND IS IT FAIR TO SAY YOU WERE ABOUT A -- I
24 DON'T KNOW, C PLUS, B MINUS?

25 A. I WOULD SAY A C PLUS IN HIGH SCHOOL.

1 Q. YOU TOOK A NUMBER OF HONORS AND AP LEVEL
2 CLASSES; CORRECT?

3 A. I DID.

4 Q. NOW I AM GOING TO PULL UP JX 4. THIS IS ANOTHER
5 DOCUMENT THAT IS ALREADY IN EVIDENCE.

6 SO THIS IS YOUR BEREA COLLEGE TRANSCRIPT;
7 CORRECT, DR. KITCHENS?

8 A. YES.

9 Q. THIS IS NOT A DOCUMENT THAT WAS SUBMITTED TO
10 NBME IN SUPPORT OF YOUR ACCOMMODATION REQUEST; CORRECT?

11 A. I WAS NOT SURE IF I NEEDED TO SUBMIT THIS TO THE
12 NBME.

13 Q. BUT YOU ARE NOW RELYING ON IT IN THIS
14 LITIGATION; CORRECT?

15 A. I AM, YES.

16 Q. YOU MAJORED IN MUSIC AT BEREA?

17 A. YES, I MAJORED IN MUSIC AT BEREA.

18 Q. IF WE LOOK AT THE BEREA AT THE FALL OF 2010, AND
19 I THINK WE MIGHT NEED TO GO TO THE NEXT PAGE IT'S -- I
20 THINK THIS IS IN REVERSE ORDER.

21 OH, THERE IT IS. OKAY.

22 A. IT IS ACTUALLY VERY HARD FOR ME TO READ IT TO BE
23 HONEST.

24 Q. OKAY.

25 A. I THINK IT'S THE COLOR, BUT IT'S OKAY.

1 Q. IF YOU WOULD LIKE MARKCUS, WHAT I HAVE BEEN
2 DOING SOMETIMES WHEN YOU WERE PUTTING UP DOCUMENTS I
3 HAVE LOOKED AT MY OWN ELECTRONIC COPY ON MY OTHER
4 SCREEN, SO AS LONG AS YOU ARE COMFORTABLE WE ARE TALKING
5 ABOUT THE SAME THING IF YOU WOULD LIKE TO LOOK AT THAT?

6 A. I AM COMFORTABLE, YES.

7 Q. OKAY. IF WE LOOK AT YOUR GRADE IN MODERN
8 BIOLOGY, IN THE FALL OF 2010, THIS LOOKS LIKE YOUR
9 FRESHMAN YEAR; IS THAT RIGHT?

10 A. YES, THIS IS CORRECT.

11 Q. AND YOUR GRADE IN MODERN BIOLOGY WAS A C
12 PLUS?

13 A. WHERE? YES. THAT IS CORRECT. THAT WAS THE
14 CLASS WITH DR. ALYSSA HANNA, WHO GAVE ME -- WHO GAVE ME
15 UNOFFICIAL ACCOMMODATIONS.

16 Q. AND THEN IF WE LOOK TO THE FALL OF YOUR
17 SOPHOMORE YEAR --OOPS, THE FALL OF YOUR SOPHOMORE YEAR,
18 SO 2011, YOU TOOK FOUNDATIONS OF CHEMISTRY; CORRECT?

19 A. CAN YOU USE YOUR CURSOR TO SHOW ME EXACTLY WHERE
20 YOU ARE? WHO EVER IS DOING IT FOR YOU? THANK YOU.

21 Q. DO YOU SEE IT?

22 A. YES, MA'AM, I DO.

23 Q. OKAY. AND YOU EARNED A D IN FOUNDATIONS OF
24 CHEMISTRY; CORRECT?

25 A. THAT'S CORRECT.

1 Q. IN THE -- IF WE GO TO THE SPRING OF 2012, UP --
2 GO BACK UP. WE ARE AT THE VERY BOTTOM OF THE PAGE I AM
3 LOOKING AT BOTANY, AND WE WILL EXPAND IT.

4 YOU EARNED A C IN BOTANY; IS THAT
5 CORRECT? CAN YOU PUT YOUR CURSOR OVER IT, PLEASE?

6 A. OH, YES. I DO SEE AT THE BOTTOM YES, I DO.

7 Q. AND DID YOU EARN A C IN BOTANY?

8 A. YES, I DID. THIS IS ALSO ANOTHER COURSE WITH
9 DR. ALYSSA HANNA, WHO GAVE ME UNOFFICIAL ACCOMMODATIONS.

10 Q. AND THEN IF WE GO --

11 DR. KITCHENS, I TEND TO DEFAULT BACK TO
12 THE PAPER. SO I'LL NEED JUST A SECOND.

13 A. THAT'S OKAY. TAKE YOUR TIME. I HAVE NO WHERE
14 ELSE TO GO.

15 Q. FALL OF 2012. ON THE FIRST PAGE OF THIS
16 DOCUMENT, OVER ON THE LEFT-HAND SIDE, DO YOU SEE WHERE
17 -- YES.

18 SO WE ARE GOING TO LOOK AT EXPERIMENTAL
19 ZOOLOGY.

20 DO YOU SEE THAT?

21 A. YES, I DO.

22 Q. YOU EARNED A D IN THAT CLASS; IS THAT CORRECT?

23 A. THIS IS ALSO CORRECT.

24 Q. AND THEN, ALSO IN THE FALL OF 2012, YOU TOOK
25 GENERAL PHYSICS WITH ALGEBRA AND SCORED A D?

1 A. I THINK THAT'S A C?

2 Q. IN THE GENERAL PHYSICS ONE WITH ALGEBRA?

3 A. OH, I'M SORRY. I SAW GENERAL CHEMISTRY ABOVE
4 YOU AS A C, BUT YES.

5 Q. AND THEN IN THE ACCELERATED GENERAL CHEMISTRY
6 CLASS YOU EARNED A C MINUS; CORRECT?

7 A. YES.

8 Q. IF WE LOOK AT SPRING OF 2013, WHICH IS JUST
9 FURTHER DOWN IN THE COLUMN RIGHT, IT'S BELOW THERE.

10 DO YOU SEE WHERE WE ARE, WHERE ORGANIC
11 CHEMISTRY IS, YOU EARNED A D IN THAT CLASS?

12 A. THAT IS CORRECT.

13 Q. I AM ALSO LOOKING ON THIS TRANSCRIPT, DR.
14 KITCHENS, AND IT LOOKS LIKE YOU DID -- YOU WERE GETTING
15 A'S IN YOUR MUSIC CLASSES?

16 A. SO IT'S IMPORTANT TO UNDERSTAND THAT MUSIC
17 COURSES DO NOT REQUIRE AS INTENSE AMOUNT OF READING AND
18 TEXTBOOKS VERSUS ACTUALLY HANDS ON AND DOING. BUT YES,
19 THIS IS CORRECT.

20 Q. DO I UNDERSTAND THAT THE YOU DID NOT PARTICIPATE
21 IN ANY TYPE OF POST BACCALAUREATE PROGRAM BEFORE
22 ATTENDING MEDICAL SCHOOL?

23 A. NO.

24 Q. OR TAKE ANY OTHER SCIENCE CLASSES BEFORE
25 ATTENDING MEDICAL SCHOOL?

1 A. NO.

2 Q. AND I BELIEVE YOU TESTIFIED THAT YOU DID NOT
3 PERFORM WELL ON THE MEDICAL COLLEGE ADMISSION TEST, OR
4 MCAT; IS THAT CORRECT?

5 A. THIS IS CORRECT. I DID NOT -- I WAS NOT AWARE
6 THAT I COULD APPLY FOR ACCOMMODATIONS ON THAT PARTICULAR
7 EXAMINATION. AT LEAST I DON'T -- I DON'T REMEMBER.

8 Q. BUT YOU SCORED WHAT YOU CONSIDERED TO BE
9 BASICALLY A ZERO ON THAT TEST, I THINK IS WHAT YOU SAID?

10 A. THIS IS CORRECT.

11 Q. BUT YOU WERE STILL ADMITTED TO MEDICAL SCHOOL;
12 CORRECT?

13 A. SO IT'S ALSO CLEAR -- IT NEEDS TO BE MADE CLEAR
14 THAT NOT ALL MEDICAL SCHOOLS, EVEN IN THE STATES,
15 REQUIRE AN MCAT SCORE AND SO SOME SCHOOLS WILL REQUIRE
16 IT FOR CERTAIN PURPOSES FOR YOU TO ACTUALLY HAVE IT, BUT
17 FOR YOU TO ACTUALLY SCORE WELL ON IT, THEY DON'T
18 NECESSARILY RECOGNIZE THAT. SO MY SCHOOL DID NOT
19 NECESSARILY REQUIRE IT.

20 Q. I UNDERSTAND.

21 YOU ATTENDED MEDICAL SCHOOL IN POLAND;
22 CORRECT?

23 A. YES.

24 Q. AND DID YOU HAVE TO PHYSICALLY MOVE TO POLAND,
25 DID YOU LIVE IN POLAND WHILE YOU WERE TAKING CLASSES

1 THERE?

2 A. YES.

3 Q. AND HOW LONG DID YOU LIVE IN POLAND?

4 A. TWO YEARS AND MAYBE A SEMESTER, MAYBE.

5 Q. WERE YOUR CLASSES IN ENGLISH OR IN POLISH?

6 A. ENGLISH.

7 Q. IF WE CAN PULL UP JX 5, THIS IS ANOTHER DOCUMENT
8 THAT HAS ALREADY BEEN ADMITTED. IT'S A COPY OF YOUR
9 MEDICAL SCHOOL TRANSCRIPTS.

10 THIS IS A DOCUMENT THAT YOU PRODUCED IN
11 THIS LITIGATION; CORRECT, DR. KITCHENS?

12 A. YES, THIS IS CORRECT.

13 Q. AND YOU ARE RELYING ON THIS DOCUMENT AS PART OF
14 THIS LITIGATION?

15 A. YES, THIS IS CORRECT.

16 Q. BUT THIS IS NOT A DOCUMENT THAT YOU PROVIDED TO
17 NBME AS PART OF YOUR 2022 ACCOMMODATION REQUEST;
18 CORRECT?

19 A. THIS -- I DON'T -- NO, THIS DOCUMENT WAS NOT IN
20 THERE AND IF I AM NOT MISTAKEN, NBME HAS ALREADY HAD A
21 COPY OF THIS ON RECORD FOR MY REGISTRATION.

22 Q. BUT YOU DID NOT INCLUDE IT WITH YOUR REQUEST --
23 OR RELY ON IT? LET ME PUT IT THAT WAY, DR. KITCHENS.

24 DID YOU RELY ON THIS RECORD AS PART OF
25 YOUR ACCOMMODATION REQUEST IN 2022?

1 A. NO, I DID NOT.

2 Q. IF WE LOOK AT YOUR FIRST SEMESTER OF MEDICAL
3 SCHOOL IN LUBLIN?

4 A. LUBLIN.

5 Q. SORRY. LUBLIN.

6 YOU EARNED A 2.43 G.P.A.; CORRECT, CAN
7 YOU SEE THAT?

8 A. YES, I DO.

9 Q. AND YOU -- JUST JUST TO MAKE SURE THE RECORD IS
10 CLEAR, YOU EARNED A 2.43 G.P.A. YOUR FIRST SEMESTER?

11 A. CAN YOU ZOOM IN PLEASE? YES. I DON'T HAVE THE
12 DOCUMENTS IN FRONT OF ME, I'M SORRY.

13 Q. CAN YOU SEE IT NOW?

14 A. YES, I CAN.

15 Q. DID YOU EARN A 2.43 YOUR FIRST SEMESTER IN
16 MEDICAL SCHOOL?

17 A. I DID.

18 Q. DID YOU EARN A 2.36 G.P.A. IN YOUR SECOND
19 SEMESTER OF MEDICAL SCHOOL?

20 A. YES, I DID.

21 Q. TURNING TO THE NEXT PAGE.

22 IN YOUR THIRD SEMESTER YOU EARNED A 2.78
23 G.P.A.?

24 A. YES.

25 Q. AND THEN YOUR FOURTH SEMESTER, END OF YOUR

1 SECOND YEAR YOU EARNED A 2.62 G.P.A.?

2 A. YES.

3 Q. THE STEP 1 EXAMINATION MEASURES YOUR BASIC
4 SCIENCE KNOWLEDGE; RIGHT, SIMILAR TO WHAT YOU STUDY IN
5 YOUR FIRST TWO YEARS OF MEDICAL SCHOOL?

6 A. THIS IS CORRECT.

7 Q. AND I THINK YOU TESTIFIED BEFORE THAT I THINK
8 MOST STUDENTS TAKE THE STEP 1 EXAM AFTER THEY COMPLETE
9 THEIR SECOND YEAR OF MEDICAL SCHOOL?

10 A. THAT IS A PATHWAY THAT IS COMMON FOR STUDENTS
11 WHO GO TO SCHOOL IN THE UNITED STATES. FOR THOSE WHO
12 ARE IMGs, THIS IS NOT A COMMON PRACTICE. BUT FOR THOSE
13 WHO GO TO SCHOOL IN THE STATES, THEY ALWAYS DO BECAUSE
14 THE SCHOOL REQUIRES IT, OTHERWISE THEY WOULD EITHER
15 SUSPEND THEM OR EXPEL THEM FROM THE -- FROM THAT MEDICAL
16 SCHOOL. THIS WAS NOT THE POLICY FOR MY UNIVERSITY.

17 Q. RIGHT. YOU WERE NOT REQUIRED TO TAKE IT AFTER
18 YOUR SECOND YEAR?

19 A. NO, I WAS NOT.

20 Q. AND THEN YOU GRADUATED FROM MEDICAL SCHOOL IN
21 JANUARY OF 2021; IS THAT RIGHT?

22 A. YES.

23 Q. YOU TOOK A USMLE TUTORING CLASS BETWEEN
24 JANUARY 20, 2020, TO APRIL 30TH, 2020; IS THAT CORRECT?

25 A. WHICH PROGRAM ARE YOU SPEAKING OF?

1 Q. I AM NOT SPEAKING OF ANY PARTICULAR PROGRAM.

2 DID YOU TAKE A USMLE TUTORING CLASS
3 BETWEEN FEBRUARY 20TH, AND APRIL 30TH, OF 2020?

4 A. I CANNOT CONTEST TO THAT WITHOUT SEEING THE
5 DOCUMENT THERE.

6 Q. OKAY. LET'S PULL UP DX 3.

7 A. WHAT WAS THAT Z-X?

8 Q. DX, FOR DEFENDANT'S EXHIBIT.

9 A. THANK YOU.

10 Q. WE WILL GO TO PARAGRAPH 30. CAN YOU -- YOU CAN
11 READ PARAGRAPH 30 TO YOURSELF, DR. KITCHENS?

12 A. YES, I -- THIS IS CORRECT.

13 Q. JUST FOR THE RECORD IS CLEAR, DOES THIS REMIND
14 YOU THAT YOU TOOK A SMASH USMLE TUTORING COURSE FROM
15 FEBRUARY 20TH, TO APRIL 30TH, 2020?

16 A. YES, I DID.

17 Q. BUT YOU --

18 A. THAT'S CORRECT.

19 Q. BUT DID YOU NOT TAKE THE STEP 1 EXAM IMMEDIATELY
20 AFTER COMPLETING THIS TUTORING COURSE; CORRECT?

21 A. I TOOK OTHER PROGRAMS AFTER THAT -- OTHER
22 TUTORING PROGRAMS AFTER THAT SMASH USMLE.

23 Q. RIGHT. MY QUESTION IS:

24 DID YOU ATTEMPT THE STEP 1 IMMEDIATELY
25 AFTER FINISHING THE SMASH USMLE TUTORING CLASS?

1 A. NO.

2 Q. YOUR FIRST ATTEMPT AT THE STEP 1 EXAMINATION --
3 YOU CAN TAKE THAT DOWN.

4 YOUR FIRST ATTEMPT AT THE STEP 1
5 EXAMINATION CAME MORE THAN A YEAR AFTER YOU GRADUATED
6 FROM MEDICAL SCHOOL; CORRECT, IN FEBRUARY 2022.

7 A. THAT SOUNDS CORRECT.

8 DR. KITCHENS: SORRY, THAT'S MY WEATHER
9 ALARM GO OFF IF YOU CAN HEAR THAT. WE HAVE
10 THUNDERSTORMS, SO WE HAVE TORNADO WARNINGS. SO IF I DO
11 LOOSE POWER, JUST TO LET YOU GUYS KNOW.

12 MS. MEW: STAY SAFE. LET ME KNOW IF YOU
13 NEED TO SHELTER.

14 DR. KITCHENS: YES, ITS COMMON IN
15 KENTUCKY, AS YOU HAVE PROBABLY SEEN IN THE NEWS.

16 MS. MEW: I GREW UP IN NORTH CAROLINA, SO
17 IT'S...

18 BY MS. MEW:

19 Q. YOU ARE FAMILIAR WITH THE COMPREHENSIVE BASIC
20 SCIENCE EXAMINATION, OR CBSE; CORRECT?

21 A. YES, THIS IS CORRECT.

22 Q. YOU TALKED ABOUT IT IN YOUR DIRECT.

23 AND THIS EXAMINATION REFLECTS CONTENT
24 COVERAGE ON THE USMLE STEP 1; CORRECT?

25 A. YES.

1 Q. AND AS I BELIEVE YOU TESTIFIED, YOU TOOK THE
2 CBSE IN DECEMBER OF 2020, SHORTLY BEFORE GRADUATING
3 MEDICAL SCHOOL?

4 A. YES.

5 Q. AND I THINK YOU ALSO EXPLAINED THIS, THE CBSE IS
6 ADMINISTERED AT PROMETRIC TEST CENTER, SIMILAR TO THE
7 WAY THE USMLE IS ADMINISTERED; CORRECT?

8 A. YES.

9 Q. SO IT IS A PROCTORED EXAMINATION?

10 A. YES, THIS IS CORRECT.

11 Q. YOU WERE APPROVED BY YOUR MEDICAL SCHOOL TO
12 RECEIVE EXTENDED TIME ON THE CBSE; CORRECT, I THINK YOU
13 TESTIFIED TO THAT?

14 A. YES, I WAS APPROVED FOR THOSE OFFICIAL
15 ACCOMMODATIONS.

16 Q. AND IT WAS DOUBLE THE AMOUNT OF STANDARD TESTING
17 TIME?

18 A. THAT IS WHAT I AM TO BE -- TO BE ASSUMED.

19 Q. I THINK YOU TESTIFIED -- I MEAN, I JUST -- I
20 THINK YOU TESTIFIED IN YOUR DIRECT YOU GOT DOUBLE TIME
21 ON THE CBSE; CORRECT?

22 A. YES.

23 Q. THANK YOU.

24 AND YOU STUDIED EXTENSIVELY BEFORE TAKING
25 THE CBSE; CORRECT?

1 A. YES, THIS IS CORRECT.

2 Q. AND YOU SCORED, I THINK WE SAW 156 ON THE TEST?

3 A. CAN YOU BRING IT UP? I DON'T HAVE IT IN FRONT
4 OF ME TO KNOW FOR SURE TO STIPULATE TO 156.

5 Q. AND JUST FOR -- DR. KITCHENS, I JUST WANT TO
6 MAKE -- ARE YOU COMMUNICATING WITH SOMEONE RIGHT NOW, OR
7 -- BECAUSE YOU KEEP --

8 A. I AM TAKING MY NOTES FOR MY CROSS.

9 Q. OKAY.

10 A. IF THAT'S OKAY?

11 Q. YES. SO LET'S GO BACK. YOU SCORED -- YOU WANT
12 TO SEE THE CBSE SCORE?

13 A. YES, I WOULD LIKE TO SEE THE SCORE. WE WILL PULL
14 UP EXHIBIT PX 52.

15 DOES THAT REFRESH YOUR RECOLLECTION, DR.
16 KITCHENS, THAT YOU EARNED A 156 ON THE CBSE?

17 A. YES, THIS IS CORRECT.

18 Q. AND THIS IS A VERY LOW SCORE; CORRECT?

19 A. IT IS NOT A PASSING SCORE.

20 Q. AND YOU HAD DOUBLE TIME ON THIS TEST?

21 A. YES, I DID HAVE ACCOMMODATIONS ON THIS EXAM.

22 Q. AND I BELIEVE YOU TESTIFIED THAT YOUR POOR
23 PERFORMANCE ON THE CBSE WAS BECAUSE IT WAS A BUSY TIME
24 AND YOU WERE FOCUSED ON GETTING READY TO GRADUATE AND TO
25 MOVE; IS THAT RIGHT?

1 A. YES. SO I HAD ALREADY GRADUATED BUT THE
2 DOCUMENTATION SAYS JANUARY, 2021. AS YOU CAN SEE ITS
3 DECEMBER 10TH, AND WE WERE MOVING. MY WIFE HAD JUST
4 GRADUATED AS WELL. SO YES, IT WAS VERY HECTIC.

5 Q. SO YOU WOULD AGREE THAT THERE ARE MANY REASONS
6 WHY SOMEONE MAY NOT PERFORM WELL ON A TEST AT ANY GIVEN
7 TIME; CORRECT?

8 A. NO, WHAT I WOULD AGREE TO IS THAT IN THIS
9 PARTICULAR CASE, I DIDN'T GIVE THE ATTENTION TO IT, ON
10 PURPOSE. BUT I CANNOT SPEAK FOR OTHER PEOPLE'S REASONS
11 WHY THEY DID NOT PASS AN EXAM.

12 Q. FAIR ENOUGH, DR. KITCHENS. SO LET'S NOW TALK
13 ABOUT THE CBSSA EXAMINATION.

14 THIS IS THE COMPREHENSIVE BASIC SCIENCE
15 SELF-ASSESSMENT EXAMINATION; CORRECT?

16 A. YES.

17 Q. AND THIS IS -- IT'S A PRACTICE EXAMINATION FOR
18 THE STEP 1 EXAM; RIGHT?

19 A. ITS AN EXAMINATION TO GAUGE YOUR -- YOUR
20 LIKELIHOOD OF PASSING THE USMLE.

21 Q. AND IS IT ALSO USED FOR PREPARING FOR THE USMLE?

22 A. YES, ALONG WITH HUNDREDS OF OTHER TYPES OF TEST
23 PREPS.

24 Q. NOW THE CBSE, WHICH WE JUST DISCUSSED AS WE SAID
25 IS A PROCTORED EXAMINATION OFFERED ONLY IN PROMETRIC

1 TEST CENTERS; CORRECT?

2 A. YES, THIS IS CORRECT.

3 Q. THE CBSSA, IN CONTRAST, IS SOMETHING THAT YOU
4 PERSONALLY ORDER AND TAKE ON YOUR OWN; CORRECT?

5 A. SO THE CBSSA IS AN EXAM THAT YOU DO THAT YOU CAN
6 -- THAT YOU PURCHASE ON YOUR OWN, BUT YOU CAN ALSO
7 CHOOSE WHETHER OR NOT TO HAVE IT AS AN UNTIMED EXAM OR
8 TO GIVE AND IT -- OR TO GIVE IT AS A STANDARDIZED EXAM,
9 AND THE REASON THAT THEY SAY TO DO IT THAT WAY IS IT'S
10 SUPPOSED TO HELP REPRESENT HOW THE TIME WOULD BE TO
11 REPLICATE THE ACTUAL EXAM AS IF YOU WERE TAKING IT
12 THERE.

13 Q. YES, SO LET'S -- I WANT TO JUST TEASE THESE TWO
14 THINGS OUT.

15 YOU ARE TALKING ABOUT THE CBSSA CAN
16 EITHER BE TAKEN UNDER STANDARD TIME?

17 A. MM-HMM.

18 Q. OR SELF-PACED?

19 A. RIGHT. AND UNDER STANDARD TIME, YOU -- IT'S
20 TIMED AND ONCE THE TIME IS UP, IT'S UP. SO IF YOU DON'T
21 FINISH THE EXAM DURING THE ALLOTTED TIME YOUR SCORE WILL
22 BE -- BE REFLECTED.

23 BUT IF YOU DO AS SELF-EXAMINATION, I CAN
24 PAUSE THE EXAM AND I CAN TAKE AND --- I CAN TAKE FIVE
25 QUESTIONS OF IT, HIT PAUSE AND COME BACK TWO DAYS LATER

1 AND CONTINUE THE EXAM, BUT NOT UNDER STANDARD -- SORRY.

2 (ALARMS GOING OFF.)

3 DR. KITCHENS: BUT NOT UNDER STANDARD

4 TIME. SORRY, ONE SECOND. SORRY, JUDGE.

5 BY MS. MEW:

6 Q. IS EVERYTHING OKAY?

7 A. YES, I THINK SO. THEY ARE SENDING ALERTS OUT TO
8 EVERYTHING, BUT WE CAN CONTINUE.

9 Q. OKAY. SO WE WERE JUST TALKING ABOUT THE
10 DIFFERENCE OF CHOICE, TO TAKE IT EITHER A STANDARD TIME
11 OR SELF-PACED. THE OTHER ASPECT OF THIS CBSSA THAT I'M
12 TALKING ABOUT IS THAT IT'S NOT PROCTORED.

13 SO YOU ORDERED THE TEST, YOU CAN TAKE IT
14 AT HOME, YOU CAN TAKE IT WHEREVER YOU WANT, THERE'S NOT
15 SOMEONE -- IT'S NOT THE SAME SECURE TEST ENVIRONMENT
16 LIKE WHEN YOU GO TO PROMETRIC TO TAKE THE CBSE OR THE
17 STEP 1?

18 A. THAT'S CORRECT. BUT I WOULD ALSO SAY THAT ITS
19 NOT BENEFICIAL FOR THE PERSON WHO IS RELYING ON IT AS
20 SUCH DOCUMENTATION OR A RESOURCE TOOL TO NOT TAKE IT
21 SERIOUSLY, ESPECIALLY IF IT'S GAUGING YOUR PERFORMANCE
22 ON SUCH AN IMPORTANT EXAM SUCH AS THE STEP 1.

23 Q. THAT'S -- THAT'S FINE. BUT JUST SO WE'RE ALL
24 CLEAR, ITS NOT PROCTORED?

25 A. YES.

1 Q. OKAY. WITH THE CBSSA, AFTER YOU COMPLETE THE
2 EXAM YOU GET TO REVIEW THE QUESTIONS ON THE TEST ALONG
3 WITH THE CORRECT ANSWERS; CORRECT?

4 A. YES, THE NBME JUST STARTED DOING THAT ACTUALLY A
5 COUPLE OF YEARS AGO, BUT FOR MANY YEARS THAT WAS NOT AN
6 OPTION. AND YES, FOR MANY YEARS IT WAS NOT.

7 Q. AND YOU HAVE ACCESS TO THESE TEST QUESTIONS AND
8 ANSWERS FOR TWO YEARS AFTER YOU PURCHASED THE
9 EXAMINATION; CORRECT?

10 A. I'M NOT QUITE SURE.

11 Q. WELL, LET ME ASK YOU THIS, DR. KITCHENS:

12 DID YOU HAVE ACCESS TO THE TEST QUESTIONS
13 AND ANSWERS FOR THE CBSSA'S YOU TOOK IN 2021?

14 A. NO.

15 YOU MEAN BEFORE I ACTUALLY TOOK THE EXAM,
16 FOR CLARIFICATION?

17 Q. NO. AFTER YOU -- I WILL PULL UP A DOCUMENT TO
18 HELP. IF WE CAN PULL UP THAT FAQ NBME ASSESSMENT?

19 SO DR. KITCHENS, IF YOU WANT TO LOOK AT
20 THIS DOCUMENT?

21 A. THIS IS A DOCUMENT THAT I SHOULD HAVE?

22 Q. NO. IF YOU LOOK AT THE BOTTOM OF THE PAGE, IF
23 YOU CAN READ THE SECTION? YOU CAN READ IT TO YOURSELF,
24 WE WILL PULL IT UP.

25 A. THANK YOU.

1 Q. FIRST, IF YOU WILL READ, DR. KITCHENS, ABOUT
2 TWO-THIRDS OF THE WAY DOWN, WHERE IT SAYS, "WILL THE
3 UPDATED COMPREHENSIVE BASIC SCIENCE SELF-ASSESSMENTS
4 CBSSA'S INCLUDE ANSWER EXPLANATIONS?"

5 A. YES, I DO SEE THAT.

6 Q. OKAY. IF YOU CAN READ THAT.

7 DOES THAT REFRESH YOUR RECOLLECTION, DR.
8 KITCHENS, THAT WHEN YOU TOOK THE CBSSA FOR THE ONES THAT
9 YOU TOOK AFTER MARCH, 2021, THAT YOU HAD ACCESS TO THE
10 QUESTIONS AND ANSWERS -- CORRECT ANSWERS AFTER YOU TOOK
11 THE TEST?

12 A. FROM -- ACCORDING TO THIS DOCUMENT CORRECT, YES.

13 Q. AND YOU CAN TAKE THAT DOWN.

14 AND IT IS MY UNDERSTANDING THAT THIS IS
15 JUST -- IT IS PART OF THE USE OF THE TEST BECAUSE YOU'RE
16 -- IT'S A LEARNING PROCESS SO YOU GET TO SEE WHAT THE
17 CORRECT ANSWERS ARE AND, AGAIN, IT'S PART OF STUDY AIDE;
18 CORRECT?

19 A. AGAIN, WHEN I FIRST STARTED STUDYING FOR THE
20 USMLE THOSE RESOURCES WERE NOT AVAILABLE. MOST PEOPLE
21 STARTED STUDYING FOR THE USMLE A YEAR BEFORE THEY EVEN
22 TAKE THE EXAM, ESPECIALLY THOSE WHO GO TO SCHOOL IN THE
23 STATES. SO WHEN I FIRST STARTED PREPARING FOR IT, THOSE
24 TYPES OF EXPLANATIONS WERE NOT AVAILABLE.

25 Q. LET ME -- YOU TOOK A CBSSA IN JULY OF 2021;

1 CORRECT?

2 A. I'M NOT SURE. I DON'T RECALL.

3 Q. OKAY. THIS MIGHT HELP IF WE COULD OPEN UP THE
4 PRETRIAL MEMORANDUM DOCUMENT. WE ARE GOING TO THE
5 STIPULATION SECTION, IT'S ON PAGE 5.

6 SO DR. KITCHENS, CAN YOU SEE THIS
7 DOCUMENT?

8 A. I CAN. I CANNOT READ IT.

9 Q. YOU CANNOT READ IT? DO WE NEED TO EXPAND IT?

10 A. YES. GOING FORWARD IT WOULD BE HELPFUL IF WE
11 JUST GO AHEAD EXPAND EVERY TIME, PLEASE.

12 Q. CERTAINLY.

13 A. THANK YOU.

14 Q. SO IF YOU COULD JUST READ PARAGRAPH 18, DR.
15 KITCHENS, AND I'M SORRY, WE WENT THROUGH THAT PRETTY
16 SLOWLY, BUT THAT IS THE JOINT PRETRIAL MEMORANDUM AND
17 THIS IS THE STIPULATION SECTION. I WILL JUST REPRESENT
18 THAT TO YOU.

19 A. THAT'S OKAY. 18 SAYS, "DR. KITCHENS TOOK A
20 CBSSA ON JULY THE 12TH, 2021, AND RECEIVED AN ASSESSMENT
21 SCORE OF 151, UNDER STANDARD-PACED."

22 YES, THIS WAS OVER SIX, SEVEN MONTHS
23 BEFORE I EVER TOOK THE -- EVEN ATTEMPTED AT THE STEP.

24 Q. I UNDERSTAND, BUT THIS STATEMENT, THE ONE THAT
25 YOU JUST READ OUT LOUD, I JUST WANT TO GET THIS -- YOU

1 TOOK THE CBSSA ON JULY 12TH, 2021, AND RECEIVED AN
2 ASSESSMENT SCORE OF 151, UNDER STANDARD-PACED TIMING;
3 CORRECT?

4 A. YES, THIS IS CORRECT.

5 Q. AND AFTER YOU TOOK THE CBSSA, YOU HAD ACCESS TO
6 THE TEST QUESTIONS AND THE ANSWERS TO THOSE QUESTIONS;
7 CORRECT?

8 A. YES, ACCORDING TO -- I DON'T REALLY REMEMBER, TO
9 BE HONEST WITH YOU.

10 Q. ON FEBRUARY 14TH, 2022, YOU TOOK ANOTHER CBSSA
11 ASSESSMENT; CORRECT?

12 A. YES.

13 Q. AND LET'S PULL UP -- THAT WAS PX 53.

14 SO ON THIS CBSSA, THAT YOU TOOK ON
15 FEBRUARY 14TH, 2022, YOU EARNED A 212, A SCORE OF 212
16 UNDER STANDARD CONDITIONS; CORRECT?

17 A. CAN YOU -- YES, THIS IS CORRECT.

18 Q. AND MAYBE JUST SCROLL DOWN SO WE CAN SEE WHAT --

19 A. THE DOCUMENT, PLEASE.

20 Q. THIS CBSSA, THAT YOU TOOK ON FEBRUARY 14TH,
21 2022, WAS THE SAME CBSSA THAT YOU HAD PREVIOUSLY TAKEN
22 IN JULY 2021; CORRECT, THEY WERE THE SAME FORM?

23 A. HONESTLY, I DID NOT RECALL IF IT WAS THE SAME
24 FORM OR NOT, BUT WE ARE ALSO TALKING, YOU KNOW, AN
25 ENTIRE, YOU KNOW, YEAR SO BETWEEN TAKING THE EXAM. I AM

1 MEMORIZING -- I CAN'T MEMORIZE THE QUESTION. YOU EITHER
2 KNOW THE INFORMATION OR YOU DON'T.

3 Q. LET'S JUST -- TO HELP REFRESH YOUR RECOLLECTION,
4 CAN YOU PULL UP THE MARKCUS KITCHENS EXAM HISTORY
5 DOCUMENT?

6 A. DOES IT SAY WHICH FORM IS ON THERE?

7 Q. YES. CAN YOU PULL THE -- WE CAN SEE THAT. HOLD
8 ON.

9 A. OKAY.

10 Q. LET'S PULL BACK UP THE 2-14-2022, OH, THE PX 53,
11 AND I THINK YOU NEED TO SCROLL TO THE LAST PAGE.

12 AND IF YOU EXPAND IT, DO YOU SEE THERE AT
13 THE TOP, DR. KITCHENS, WHERE IT SAYS, "FORM NAME: FORM
14 25"?

15 A. YES.

16 Q. AND STANDARD PACING?

17 A. YES.

18 Q. OKAY. SO GOING BACK, IF WE CAN PULL UP MARKCUS
19 KITCHENS EXAM HISTORY.

20 DR. KITCHENS, DOES THIS REFRESH YOUR
21 RECOLLECTION THAT YOU TOOK THE SAME FORM CBSSA ON
22 JULY 11TH, 2021, AND ON FEBRUARY 14TH, 2022?

23 A. YES.

24 Q. YOU CAN TAKE THAT DOWN.

25 SO THE SECOND TIME YOU TOOK -- JUST TO

1 RECAP -- THE SECOND TIME YOU TOOK THIS FORM OF THE CBSSA
2 YOU SCORED 212; CORRECT?

3 A. YES, CORRECT.

4 Q. WHICH IS MUCH HIGHER THAN THE SCORE OF 151 YOU
5 RECEIVED THE FIRST TIME YOU TOOK THE TEST; CORRECT?

6 A. YES. THIS IS CORRECT. AND IT SHOULD BE NOTED
7 THAT MOST STUDENTS, WE HAVE WHAT WE CALL A DEDICATED
8 STUDY PERIOD THAT THIS IS KNOWN ACROSS -- AND EVEN
9 UNIVERSITIES IN THE UNITED STATES AND ACROSS THE WORLD
10 WILL ALLOW THEIR STUDENTS THREE MONTHS TIME PERIOD TO
11 STUDY FOR THOSE EXAMS.

12 SO A YEAR-AND-A-HALF OR SO, AND ALSO THE
13 SCHOOLS WILL NOT ALLOW YOU TO TAKE THE STEP 1 EXAM IF
14 YOU TAKE A CBSSA OVER A THREE-MONTH PERIOD OR SOMETIMES
15 A MONTH'S PERIOD, BECAUSE THEY FEEL THAT THEY CAN'T
16 REALLY JUDGE IT.

17 Q. I WANT TO QUICKLY PULL UP, IF WE CAN, PX 77.

18 OH, NO. DX 76. THIS WAS A DOCUMENT THAT
19 YOU JUST DISCUSSED IN YOUR DIRECT TESTIMONY, DR.
20 KITCHENS.

21 I AM THINKING THIS MIGHT BE A SHOWING OF
22 WHAT IT LOOKS LIKE WHEN -- AFTER YOU TAKE THE
23 COMPREHENSIVE BASIC SCIENCE SELF-ASSESSMENTS YOU GET --
24 YOU GET THE QUESTION AND YOU GET A SHOWING OF WHAT THE
25 CORRECT ANSWER IS AND THEN YOU GET AN EXPLANATION FOR

1 THE CORRECT ANSWER?

2 A. YES, THIS IS CORRECT.

3 Q. AND IT LOOKS LIKE YOU WERE ALSO ABLE TO TAKE
4 SCREEN SHOTS OF THAT?

5 A. YES, THIS IS CORRECT. SCREEN SHOTS OF MY FINAL
6 SCORE. AS YOU CAN SEE THE SCORE -- THE CORRECT ANSWER
7 IS ALREADY NOTED AND SHOWN AND THAT'S WHY IT HAS A CHECK
8 MARK UP THERE BY NUMBER 3, SAYING THAT I SCORED IT
9 CORRECT.

10 Q. YOU CAN TAKE THOSE DOWN.

11 IF WE PUT OURSELVES BACK IN TIME, YOU
12 TOOK THE SAME FORM OF THE CBSSA ON FEBRUARY 25TH, 2022,
13 AND THEN?

14 A. 25TH?

15 Q. NO, I JUST MESSED UP THE DATES. SCRATCH THAT.

16 SO AFTER YOU TOOK THIS FORM OF THE CBSSA
17 FOR THE SECOND TIME, ON FEBRUARY 25TH, 2022, YOU SAT FOR
18 THE ACTUAL STEP 1 EXAM; IS THAT RIGHT?

19 A. YES.

20 Q. AND THIS STEP 1 EXAM WAS ADMINISTERED IN A
21 PROMETRIC TEST CENTER?

22 A. YES.

23 Q. AND IT WAS PROCTORED?

24 A. THIS IS CORRECT.

25 Q. AND YOU DID NOT HAVE PRIOR ACCESS TO THE EXAM

1 QUESTIONS OR ANSWERS FOR THIS STEP 1 EXAM; CORRECT?

2 A. NO, THIS IS CORRECT.

3 Q. AND AS WE DISCUSSED, YOU DID NOT -- OR, YOU
4 DISCUSSED IN YOUR TESTIMONY, YOU DID NOT PASS THE
5 FEBRUARY 25TH, 2022, STEP 1 EXAM?

6 A. THIS IS CORRECT.

7 Q. DID YOU ALSO TESTIFY TO THIS IN YOUR DIRECT
8 TESTIMONY, DR. KITCHENS, BUT IN MARCH OF 2022, YOUR
9 WIFE, AMELIA KITCHENS, WROTE A LETTER ON YOUR BEHALF TO
10 NBME REGARDING YOUR FEBRUARY, 2022, STEP 1 SCORE;
11 CORRECT?

12 A. I'M NOT SURE OF THAT DATE.

13 Q. OKAY. WELL, LET'S DO THIS. CAN WE PULL UP DX
14 84, AND EXPAND IT? AND IF YOU CAN -- FIRST WHAT WE WILL
15 DO IS LOOK AT EACH PAGE SO YOU CAN SEE WHAT THE DOCUMENT
16 IS.

17 AND THEN IF WE CAN SCROLL BACK UP TO THE
18 FIRST PAGE?

19 AND DR. KITCHENS, YOU CAN TAKE AS MUCH
20 TIME IF YOU WOULD LIKE TO READ THE LETTER FIRST, JUST
21 LET US KNOW.

22 ARE YOU FAMILIAR WITH THIS LETTER?

23 A. YES, I AM.

24 Q. OKAY. SO HERE IS -- THIS IS MARCH 11TH, 2022,
25 LETTER FROM AMELIA KITCHENS TO THE NATIONAL BOARD OF

1 MEDICAL EXAMINERS; IS THAT CORRECT?

2 A. YES, THIS IS CORRECT.

3 Q. SO IS THIS A TRUE AND CORRECT COPY OF THIS
4 LETTER THAT -- THAT YOUR WIFE, AMELIA KITCHENS, WROTE AS
5 YOUR LAWYER?

6 A. SHE -- I DID ASK HER TO WRITE THIS LETTER.

7 MS. MEW: YOUR HONOR, I WOULD LIKE TO
8 ADMIT DX 84?

9 THE COURT: DR. KITCHENS, ANY PROBLEM
10 WITH THAT?

11 DR. KITCHENS: NO, I DO NOT.

12 THE COURT: ALL RIGHT. THEN -- IT'S DX
13 84, DID I GET THAT RIGHT, MS. MEW?

14 MS. MEW: YES, YOUR HONOR. D, AS IN DOG.

15 THE COURT: DX 84 ADMITTED.

16 (DEFENSE EXHIBIT 84 IS ADMITTED INTO
17 EVIDENCE.)

18 BY MS. MEW:

19 Q. IN THIS LETTER, YOU, THROUGH YOUR LAWYER, RAISED
20 A CONCERN WITH NBME THAT YOUR FEBRUARY, 2022, EXAM HAD
21 BEEN INCORRECTLY GRADED; CORRECT?

22 A. YES, THIS IS CORRECT.

23 Q. AND YOU REPRESENTED THAT YOU THOUGHT YOU TOOK
24 EIGHT EXAMINATION BLOCKS OF A TOTAL OF 320 QUESTIONS,
25 RATHER THAN SEVEN BLOCKS WITH A TOTAL OF 280 QUESTIONS?

1 A. YES, THIS IS VERY CORRECT.

2 Q. IS IT STILL YOUR POSITION TODAY THAT YOU WERE --
3 THAT YOU THINK YOU WERE GIVEN TOO MANY QUESTIONS ON THE
4 FEBRUARY, 2022, STEP 1 EXAM?

5 A. NO.

6 Q. IN THIS LETTER, AS A WAY OF EXPLAINING WHAT YOU
7 BELIEVED WAS AN EGREGIOUS ERROR WITH THE EXAM SCORING,
8 YOUR WIFE POINTED TO YOUR FEBRUARY, 2022, CBSSA SCORE;
9 CORRECT?

10 A. YES.

11 Q. AND SHE EVEN ATTACHED THE PAGE FROM THE CBSSA
12 SCORE REPORT SHOWING THAT YOU RECEIVED A SCORE OF 2,012?

13 A. YES.

14 Q. AND AS A WAY OF SHOWING THAT YOU SHOULD HAVE
15 RECEIVED, YOU THOUGHT, A HIGHER SCORE ON ON THE STEP 1
16 EXAM?

17 A. YES, THIS IS CORRECT.

18 Q. IF WE GO BACK TO THE LETTER.

19 YOU SOUGHT EXPUNGEMENT OF YOUR FEBRUARY,
20 2022, SCORE IN THIS LETTER; CORRECT?

21 A. YES, FOR MY EXAM TRANSCRIPT, YES.

22 Q. AND THE PREMISE OF THIS LETTER, DR. KITCHENS, IS
23 THAT YOU BELIEVED YOU PERFORMED WELL AFTER YOU TOOK THE
24 STEP 1 EXAM, IN FEBRUARY OF 2022, AND THAT THE ONLY
25 REASON YOU FAILED WAS DUE TO A SCORING ERROR BY NBME;

1 CORRECT?

2 A. WHAT THIS LETTER REPRESENTS HERE IS THAT THE
3 LEVEL OF MY ANXIETY AND DISABILITY THAT MADE ME
4 LITERALLY ALMOST DELUSIONAL TO THE POINT OF SAYING THAT
5 40 EXTRA QUESTIONS. I THINK THAT'S WHAT THIS LETTER
6 REPRESENTS.

7 Q. SO IT IS YOUR TESTIMONY THAT YOUR
8 REPRESENTATIONS IN THIS LETTER, THAT YOU THOUGHT YOU DID
9 VERY WELL ON THE TEST, WAS THE RESULT OF DELUSION?

10 A. NO, I WOULD NOT SAY THE DELUSION, IT -- USE THAT
11 PARTICULAR WORD, BUT MY ANXIETY LEVELS WERE PEAKED THERE
12 AND SO THAT IS WHAT I WILL SAY.

13 Q. OKAY.

14 A. I WAS VERY STRESSED.

15 Q. THE LETTER DID NOT SAY THAT YOU WERE UNABLE TO
16 ANSWER A LARGE NUMBER OF QUESTIONS BECAUSE YOU RAN OUT
17 OF TIME OR THAT YOU HAD TO RANDOMLY GUESS AT ANY OF THE
18 ANSWERS; CORRECT?

19 A. NOT TO MY RECOLLECTION.

20 Q. AND AGAIN, YOU SOUGHT EXPUNGEMENT FOR THE VERY
21 DIFFERENT REASON, THAT YOU THOUGHT THAT YOU WERE GIVEN
22 EXTRA QUESTIONS AND YOUR TEST WAS INCORRECTLY SCORED?

23 A. ON THIS LETTER HERE?

24 Q. YES.

25 A. CAN YOU SHOW ME WHERE THAT -- WHERE I AM ASKING

1 FOR THE EXPUNGEMENT IN THIS LETTER?

2 Q. YES, LAST PARAGRAPH. CAN YOU...

3 A. YES, THIS IS CORRECT.

4 Q. YOU THREATENED LEGAL ACTION THROUGH YOUR LAWYER
5 WITH RESPECT TO THIS CLAIMED SCORING ERROR; CORRECT?

6 A. THIS IS AN ERROR ON MY BEHALF AND I HAVE ALREADY
7 RECOGNIZED THAT.

8 Q. AND JUST AS A FACTUAL MATTER, YOU DID NOT
9 THREATEN ANY LEGAL ACTION AT THIS TIME WITH RESPECT TO
10 YOUR ACCOMMODATION REQUEST THAT WAS DENIED ON
11 FEBRUARY 8TH, 2022; CORRECT?

12 A. BECAUSE AT THAT TIME THAT WAS MY SOLE BELIEF AND
13 IF THAT WAS TRUE, AND IN YOU GUYS'S GUIDELINES, THAT WAS
14 A REMEDY THAT YOU GUYS WOULD HAVE PROVIDED, THAT WAS
15 SUCH AN ERROR WITH THE PROGRAM. SO YES, THIS IS TRUE.

16 Q. AND WHEN YOU WERE THREATENING THIS LEGAL ACTION
17 IN THIS LETTER YOU DID NOT THREATEN ANY TYPE OF LEGAL
18 ACTION IF YOU WERE NOT GIVEN TESTING ACCOMMODATIONS ON A
19 LATER ADMINISTRATION OF THE TEST; CORRECT?

20 A. BECAUSE, AGAIN, GOING STRAIGHT TO LEGAL ACTIONS
21 FOR ACCOMMODATIONS IS NOT JUST SOMETHING THAT I TAKE
22 LIGHTLY. SO I AM NOT GOING TO JUST GO TRY TO SUE
23 SOMEONE BECAUSE OF -- FOR THAT VERY REASON. BUT FOR
24 SOMETHING SUCH AS IN A STEP 1 EXAMINATION THAT FOLLOWS
25 ME FOREVER, ABSOLUTELY.

1 Q. SO WHAT YOU DID NEXT, DR. KITCHENS, IS THAT YOU
2 WENT AHEAD AND TOOK THE STEP 1 EXAM A SECOND TIME ON MAY
3 9, 2022, UNDER STANDARD CONDITIONS; CORRECT?

4 A. CAN YOU PULL UP THAT DATE?

5 Q. YES.

6 MS. MEW: AND YOU CAN TAKE THAT DOCUMENT
7 DOWN. LET'S DO THIS. LET'S JUST GO AHEAD AND GET ALL
8 OF THE SCORE RECORDS IN -- REPORTS IN THE RECORD.

9 IF YOU WILL PULL UP JX 10, AND IF YOU CAN
10 SCROLL THROUGH SO DR. KITCHENS CAN SEE IT?

11 BY MS. MEW:

12 Q. DR. KITCHENS, IS THIS A TRUE AND CORRECT COPY OF
13 YOUR STEP 1 SCORE REPORT FROM THE MAY 9TH, 2022, EXAM?

14 A. YES. IT APPEARS.

15 MS. MEW: THIS IS JX 10. YOUR HONOR, I
16 ASK TO ADMIT THIS EXHIBIT.

17 THE COURT: DR. KITCHENS?

18 DR. KITCHENS: YES.

19 THE COURT: OH, ANY OBJECTION?

20 DR. KITCHENS: OH, NO OBJECTION. I'M
21 SORRY, YOUR HONOR.

22 THE COURT: JX 10 ADMITTED.

23 (DEFENSE JOINT EXHIBIT 10 IS ADMITTED
24 INTO EVIDENCE.)

25 MS. MEW: LET'S PULL UP JX 11. IF WE CAN

1 JX 13?

2 BY MS. MEW:

3 Q. DR. KITCHENS, IS JX 13 A TRUE AND CORRECT COPY
4 OF YOUR USMLE STEP 2 CK SCORE REPORT FOR JUNE 29TH,
5 2022?

6 A. IT APPEARS TO BE CORRECT.

7 MS. MEW: DEFENDANT OFFERS EXHIBIT JX 13
8 INTO EVIDENCE?

9 DR. KITCHENS: NO OBJECTION, YOUR HONOR.

10 THE COURT: ADMITTED.

11 (DEFENSE JOINT EXHIBIT 13 IS ADMITTED
12 INTO EVIDENCE.)

13 BY MS. MEW:

14 Q. NOW, IF WE PULL UP -- IF WE PULL UP JX 10.

15 SO YOU TOOK THE STEP 1 EXAM A SECOND TIME
16 ON MAY 9TH, 2022, UNDER STANDARD CONDITIONS; CORRECT,
17 DR. KITCHENS?

18 A. YES, I PERFORMED ANOTHER CBSSA EXAMINATION AND
19 RELIED ON THAT DOCUMENTATION AND TOOK THE EXAM AGAIN.

20 Q. AND YOU DID NOT REQUEST ACCOMMODATIONS BEFORE
21 TAKING THIS EXAM ON MAY 9TH, 2022?

22 A. NO, NOT ON THIS ONE.

23 I HAD DOCUMENTATION TO PROVIDE AT THAT
24 TIME SO.

25 Q. AND THEN IF YOU PULL UP JX 11, YOU ALSO WENT

1 AHEAD AND TOOK THE STEP 2 CK EXAM ON -- SORRY, SCRATCH
2 THAT.

3 YOU WENT AHEAD AND TOOK THE STEP 1 EXAM
4 ON SEPTEMBER 29TH, 2022, UNDER STANDARD CONDITIONS;
5 CORRECT?

6 A. YES.

7 Q. AND YOU DID NOT SEEK ACCOMMODATIONS ON THIS
8 TEST?

9 A. I DID NOT.

10 Q. IF WE PULL UP JX 12, YOU TOOK THE STEP 2 CK EXAM
11 ON MAY 28TH, 2022, WITHOUT SEEKING ACCOMMODATIONS ON
12 THIS TEST; CORRECT?

13 A. I FORGET THE DATE OF -- OF WHEN I APPLIED THE
14 SECOND TIME FOR MY ACCOMMODATIONS.

15 Q. IF I REPRESENT TO YOU THAT IT WAS AT THE END OF
16 AUGUST, 2022?

17 A. YES.

18 Q. DO YOU AGREE YOU DID NOT REQUEST ACCOMMODATIONS
19 ON THE STEP 2 CK THAT WAS ADMINISTERED ON MAY 28TH,
20 2022?

21 A. I DID NOT.

22 Q. AND THEN IF WE PULL UP JX 13, YOU TOOK THE USMLE
23 STEP 2 CK ON JUNE 29TH, 2022, UNDER STANDARD CONDITIONS;
24 CORRECT?

25 A. YES.

1 Q. AND DID YOU NOT REQUEST ACCOMMODATIONS ON THIS
2 TEST?

3 A. NO, I DID NOT. MY TRUST IN THE SYSTEM WAS --
4 HAD ALREADY BEEN FAILED THERE. SO I DIDN'T FEEL THAT I
5 NEEDED TO WASTE MY TIME.

6 Q. AFTER YOU TOOK THIS JUNE 29TH, 2022, STEP 2 CK
7 EXAM, YOU SENT ANOTHER SCORE RECHECK REQUEST AFTER
8 RECEIVING YOUR RESULTS; IS THAT CORRECT?

9 A. YES, THIS IS CORRECT.

10 Q. AND YOU DID THIS BECAUSE YOU FELT AFTER TAKING
11 THE TEST THAT YOU HAD DONE WELL; CORRECT?

12 A. NO, I DID THIS BECAUSE, AGAIN, FROM WHEN I TOOK
13 STEP 1 THE FIRST TIME AND I FELT THAT I HAD TAKEN THE
14 EXAMINATION WITH AN EXTRA -- AND EXTRA BLOCK OF
15 QUESTIONS, I DID NOT TRUST THE SYSTEM AND WHEN REACHING
16 OUT TO NBME, THE HELP SERVICES DOES NOT GIVE THE
17 APPLICANT REALLY ANY INFORMATION, NO PROOF, ANYTHING.

18 THEY JUST SAY, IT WAS CORRECT, AND I AM
19 JUST SUPPOSED TO BELIEVE WHATEVER SOMEONE BEHIND A
20 COMPUTER WHO I HAVE NEVER SEEN SAYS, SO THAT'S WHY.

21 Q. LET ME ASK YOU THIS, DR. KITCHENS:

22 YOU CALLED NBME, ON SEPTEMBER 20TH OF
23 2022, TO ASK THEM ABOUT YOUR SCORE RECHECK; IS THAT
24 RIGHT? DO YOU REMEMBER THAT?

25 A. I DO NOT REMEMBER THAT.

1 Q. OKAY. LET'S PULL UP DX 93. SCROLL DOWN TO THE
2 SECOND PAGE. AND ACTUALLY, IF YOU CAN SCROLL BACK UP TO
3 THE TOP. I WANT TO GIVE SOME --

4 A. SORRY, GO AHEAD, MS. MEW?

5 Q. SO DR. KITCHENS, I JUST -- I WILL REPRESENT TO
6 YOU, THIS IS A DOCUMENT THAT WE FILED IN CONNECTION WITH
7 THE PRELIMINARY INJUNCTION PROCEEDINGS, AND THEN WE ALSO
8 PROVIDED YOU WITH A COPY OF THE ACTUAL SOUND RECORDING,
9 AND THIS IS BACK IN FEBRUARY OF 2023.

10 DO YOU RECALL THAT?

11 A. I DON'T REMEMBER A SOUND RECORDING. OR
12 REVIEWING A SOUND RECORDING. BUT FOR THIS DOCUMENT, I
13 HAVE A QUESTION OF CLARIFICATION, IF THAT'S OKAY? IS
14 THIS DOCUMENT -- IS THIS DOCUMENT DOCUMENTED FROM A
15 COMPUTER SYSTEM, LIKE AUTOMATIC -- AUTOMATED, OR IS THIS
16 A PERSON TYPING IN THE CONVERSATION AS WE ARE HAVING THE
17 CONVERSATION?

18 Q. IT'S THE LATTER, DR. KITCHENS. AND THAT'S WHY
19 WE GAVE YOU THE ACTUAL SOUND RECORDING TOO, SO YOU HAD
20 ALMOST THREE MONTHS TO CHECK ON IT.

21 I JUST WANT TO SCROLL DOWN HERE TO PAGE
22 TWO. STOP RIGHT THERE.

23 DO YOU SEE WHERE IT SAYS, "EXAMINEE," AND
24 THE FIRST WORD OF THE PASSAGE IS "OKAY"?

25 A. YES.

1 Q. DO YOU WANT ME TO EXPAND IT?

2 A. NO, I CAN READ IT JUST FINE.

3 Q. DO YOU WANT THE READ IT TO YOURSELF, JUST THAT
4 PARAGRAPH, AND I CAN ASK MY QUESTION?

5 A. YES.

6 Q. SO DOES THIS REFRESH YOUR RECOLLECTION, DR.
7 KITCHENS, THAT YOU CALLED NBME AND EXPRESSED THAT YOU
8 WERE VERY CONFIDENT IN YOUR SCORES THAT YOU HAD EXCELLED
9 IN YOUR STUDIES SO YOU THOUGHT THAT THERE WAS AN ISSUE
10 WITH THE SCORING AND NOT WITH YOUR PERFORMANCE?

11 A. SO, AS A PERSON WHO HAS GONE THROUGH THIS, AND
12 AS A STUDENT AT THAT -- A PERSON APPLYING FOR -- FOR A
13 RECHECK THERE IS CERTAIN THINGS AND WORDS THAT WE --
14 THAT WE SAY WHEN WE CALL IN TO THE HELP SERVICES TO TRY
15 TO GET THE NBME TO ACTUALLY INVESTIGATE -- INVESTIGATE
16 THE INFORMATION.

17 SO I WOULD SAY THAT NO, THIS PARTICULAR
18 INFORMATION HERE I DIDN'T FEEL 100 PERCENT CONFIDENT ON
19 THIS AND -- BUT NO, I DID NOT FEEL THAT IT WOULD BE
20 ELEMENT LIKE A ZERO PERCENT. IT HASN'T BEEN SHOWN --
21 OR, THE NBME HASN'T SHOWN US AS PEOPLE TAKING THE EXAM,
22 WHO IS REQUESTING SCORE RECHECKS, THE CONFIDENCE IN
23 THOSE RECHECKS. THEY HAVE NOT GIVEN THAT.

24 SO WE ARE FORCED TO HAVE TO SAY CERTAIN
25 THINGS TO BE LIKE, OH, OKAY, FOR THE PEOPLE TO EVEN

1 CONTINUE TO HAVE A CONVERSATION WITH YOU BECAUSE THE
2 ONLY THING THAT THEY DO WHEN YOU CALL INTO THEM IS GIVE
3 YOU THE RUNAROUND, SEEMS LIKE, AND THEN THEY SEND YOU --
4 THEN WE HAVE TO PAY 60 TO \$80 FOR THE RECHECK, JUST FOR
5 THEM TO RECHECK OUR EXAM. \$80. AND THEN THEY JUST SEND
6 US A LETTER THAT SAYS, ALMOST TWO WORDS REALLY, TWO
7 LETTERS -- NOT TWO LETTERS, BUT LIKE A LITTLE BITTY
8 PARAGRAPH SAYING EVERYTHING WAS CORRECT. SO.

9 Q. CAN YOU SCROLL UP A LITTLE BIT?

10 A. SO I NEEDED THAT TO REALLY BE UNDERSTOOD THERE.

11 Q. I HAVE NOT ASKED A QUESTIONS YET JUST BE PATIENT
12 WITH ME.

13 A. I UNDERSTAND.

14 Q. I AM NOT IN MY FLOW YET. SCROLL DOWN. NO,
15 SCROLL BACK TO PAGE TWO?

16 A. IS THIS DX 93?

17 Q. YES.

18 A. THANK YOU. SCROLL DOWN TO PAGE 3.

19 DO YOU SEE WHERE IT SAYS "GOTCHA?"

20 DR. KITCHENS, CAN YOU SEE THE PARAGRAPH
21 WHERE IT STARTS WITH, "GOTCHA," AFTER EXAMINEE.

22 A. CAN I HAVE TIME TO READ IT?

23 Q. OF COURSE.

24 A. THANK YOU. AND I NEED TO MAKE SURE I HAVE THAT
25 IN CONTEXT HERE.

1 Q. OKAY.

2 A. RIGHT. SO --

3 Q. I HAVE NOT ASKED A QUESTION.

4 A. I WAS GOING TO SAY YES, THIS IS CORRECT.

5 Q. OKAY. THANKS. I JUST WANTED TO ASK YOU:

6 DOES THIS REFRESH YOUR RECOLLECTION THAT
7 IN THIS CALL, WHEN YOU CALLED NBME, YOU EXPRESSED THAT
8 YOU DIDN'T THINK THAT THE EXAM WAS ACTUALLY THAT HARD
9 FOR YOU?

10 A. AGAIN, DUE TO THE MISTRUST IN -- IN THE NBME'S
11 GRADING SYSTEM, ON THE RECHECKS, THESE ARE THINGS THAT
12 YOU HAVE TO SAY TO BE ABLE TO GET SOME ATTENTION FROM
13 SOMEONE IN AUTHORITY BECAUSE I AM JUST A LITTLE PERSON
14 AGAINST THEIR GREAT BIG NBME.

15 Q. AND IS THAT WHY --

16 A. SO, YES, I DID SAY THAT. BUT DID I MEAN IT?

17 NO, I DID NOT.

18 Q. AND IS THAT THE SAME WITH JUST YOUR -- WHAT YOU
19 SAID ABOUT YOU DID ALL OF YOUR WORK AT THE MAYO CLINIC?

20 A. NO. THAT -- I DID DO MY ROTATIONS, MY CLERKSHIP
21 AT MAYO CLINIC, YES, BUT AT THAT TIME -- I MEAN, I AM
22 JUST TALKING ON THE PHONE SO I WON'T SAY THAT ALL OF MY
23 WORK WAS DONE AT MAYO CLINIC BECAUSE THAT'S NOT TRUE,
24 BUT IN THAT MOMENT ESPECIALLY COMING FROM AN AGITATED
25 CANDIDATE OR TEST TAKER WHO KNOWS WHAT YOU WOULD SAY ON

1 THE PHONE TO A PERSON WHO SAYS RIGHT ABOVE YOU, IT'S
2 VERY UNLIKELY THAT A CHANGE WILL EVEN BE MADE.

3 Q. YOU SAID WHAT YOU THOUGHT YOU NEEDED TO SAY TO
4 GET WHAT YOU WANTED?

5 A. NO, WHAT I DID WAS -- IT'S NOT THAT I WAS
6 MALINGERING THERE. THAT'S NOT WHAT WAS GOING ON.

7 I SAID WHAT I SAID TO GET ATTENTION FOR
8 SOMEONE TO ACTUALLY LOOK INTO THE SYSTEM. AND THAT A
9 SYSTEM THAT IS A COMPUTER CAN ALSO MAKE MISTAKES. AND
10 HER STATEMENT ABOVE JUSTIFIED THAT AND THAT'S THE REASON
11 THAT I SAID THAT.

12 IT'S VERY UNLIKELY THAT A CHANGE WILL BE
13 MADE. THAT DOESN'T PUT CONFIDENCE IN A PERSON AT ALL.

14 Q. IF WE GO BACK TO YOUR ACCOMMODATION REQUEST, DR.
15 KITCHENS, YOU DID FINALLY REQUEST ACCOMMODATIONS AGAIN
16 AT THE END OF AUGUST, 2022; IS THAT CORRECT?

17 A. YES.

18 Q. AND YOU DID NOT SUBMIT ANY NEW DOCUMENTATION
19 WITH THIS; CORRECT, I THINK YOU TESTIFIED TO THAT?

20 A. I HAD NO NEW DOCUMENTATION TO GIVE.

21 Q. SO LET ME ASK YOU ABOUT THAT.

22 I BELIEVE YOU TESTIFIED THAT WHEN YOU
23 SUBMITTED YOUR INITIAL DOCUMENTATION TO NBME YOU WERE
24 LOOKING THROUGH MEDICAL RECORDS TO FIND DOCUMENTATION TO
25 SUBMIT TO THEM; IS THAT CORRECT?

1 A. YES, THAT IS CORRECT.

2 Q. AND I BELIEVE IT'S YOUR STANDARD PRACTICE TO GET
3 PAPER COPIES OF YOUR MEDICAL RECORDS AS YOU GO THROUGH
4 YOUR LIFE SO YOU HAVE THEM AS YOU MOVE AND THINGS LIKE
5 THAT?

6 A. MM-HMM, THIS IS CORRECT.

7 Q. AND I THINK YOU ALSO MENTIONED THAT WHEN YOU
8 FIRST STARTED SEEING DR. YIN, AT BAPTIST HEALTH, YOU
9 PROVIDED HIM WITH COPIES OF YOUR FORMER MEDICAL RECORDS;
10 IS THAT CORRECT?

11 A. THE MEDICAL RECORDS THAT I SUBMITTED TO DR. YIN
12 WAS FROM WHEN I WAS IN NORTH WESTERN MEDICINE
13 DOCUMENTATION AND THE DOCUMENTATION THAT I DID HAVE THAT
14 -- AT THAT PARTICULAR TIME, THAT I GAVE TO THE NBME, IS
15 EXACT SAME DOCUMENTATION THAT YOU GUYS GOT OUT OF
16 DISCOVERY. SO THERE WAS NO NEW DOCUMENTATION TO GIVE.

17 Q. OKAY. I JUST WANT TO MAKE SURE I UNDERSTAND
18 THAT, DR. KITCHENS.

19 SO YOU ARE TELLING ME -- WELL, LET'S --
20 WHEN DID YOU START SEEING DR. YIN AT BAPTIST HEALTH?

21 A. WHEN WE MOVED DOWN HERE SO THAT WAS DECEMBER,
22 2020. BETWEEN DECEMBER, 2020, AND JANUARY, 2021.

23 Q. SO SOMETIME BETWEEN DECEMBER, 2020, AND JANUARY,
24 2021, YOU GAVE DR. YIN AT BAPTIST HEALTH ALL OF YOUR
25 MEDICAL RECORDS?

1 A. I -- NO. I GAVE HIM MY MEDICAL RECORDS -- AS I
2 JUST STATED I GAVE HIM MY MEDICAL RECORDS FROM NORTH
3 WESTERN MEDICINE THAT WAS WITH DR. KHAN, WHICH WAS ALSO
4 DOCUMENTATION THAT I SUBMITTED IN MY APPLICATION THAT I
5 JUST TESTIFIED TO.

6 Q. OKAY. SO THAT'S WHAT I WAS TRYING TO
7 UNDERSTAND. SO THE DOCUMENTS -- WHEN YOU SAID YOU GAVE
8 DR. YIN YOUR PRIOR MEDICAL RECORDS, IT WAS THE
9 APRIL 22ND, 2020, LETTER FROM DR. KHAN, AND PAGE 9 OF
10 THAT DERMATOLOGY RECORD, THAT'S WHAT YOU GAVE TO DR.
11 YIN?

12 A. I GAVE HIM ALL. SO WHEN YOU ARE -- FOR THE
13 RECORD, WHEN YOU GO TO ESTABLISH NEW AS A NEW PATIENT
14 ITS BEST TO GIVE YOUR DOCTOR AS MUCH AS YOU -- THAT'S --
15 MUCH -- THAT IS RELEVANT.

16 YOU'RE LOOKING AT A CERTAIN TIME FRAME,
17 SO I WOULD NOT HAVE GIVEN HIM DOCUMENTATION FROM WHITE
18 HOUSE CLINIC THAT WAS BACK IN 2013. I GAVE HIM THE
19 RECORDS THAT MY DOCTOR THAT I JUST HAD, WHICH WAS DR.
20 KHAN, THE ENTIRE DOCUMENTATION OF THAT. AND HE PUT THAT
21 IN THE SYSTEM.

22 AND OUT OF THAT DOCUMENTATION, I SUBMIT
23 TO THE NBME THE RELEVANT DOCUMENTATION, OUTSIDE OF, YOU
24 KNOW, UPSET STOMACH, YOU KNOW, THOSE TYPE OF THINGS. I
25 WOULD NOT DO THAT. IT WOULDN'T BE RELEVANT. SORRY.

1 Q. WHEN YOU SUBMITTED YOUR SECOND REQUEST FOR
2 ACCOMMODATIONS IN AUGUST OF 2022, NBME EXPLAINED THAT
3 BECAUSE YOU HAD NOT SUBMITTED ANY NEW DOCUMENTATION YOU
4 COULD EITHER SUBMIT ADDITIONAL DOCUMENTATION TO HAVE
5 YOUR REQUEST REVIEWED OR YOU COULD ASK THEM TO RELEASE
6 THE HOLD ON YOUR SCHEDULING PERMIT TO ALLOW TO YOU TEST
7 UNDER STANDARD CONDITIONS.

8 DO YOU RECALL THAT?

9 A. AGAIN, YES, I -- NO, WAIT. I ASKED -- I SAID TO
10 DO WHAT?

11 Q. LET'S DO THIS. IF YOU CAN PULL UP DX 78?
12 SCROLL DOWN.

13 I THINK BECAUSE ITS EXPANDED WE DON'T SEE
14 A LOT OF IT, BUT DO YOU RECOGNIZE THIS DOCUMENT, DR.
15 KITCHENS?

16 A. I HONESTLY CANNOT READ IT. IF YOU CAN ZOOM IN
17 JUST A LITTLE BIT, PLEASE? YES, I DO, AND CAN YOU TELL
18 ME THE BATES STAMP NUMBER ON THIS PAGE HERE, PLEASE?

19 Q. SURE. LET ME DO IT THIS WAY.

20 DX 78, SCROLL BACK UP -- IS A
21 SEPTEMBER 9TH -- DX 78 IS SEPTEMBER 2ND, 2022, E-MAIL
22 FROM DISABILITY SERVICES@NBME.ORG TO YOUR E-MAIL
23 ADDRESS.

24 A. YES, IF YOU CAN JUST SHOW ME THE NUMBER AT THE
25 BOTTOM RIGHT FOR TIME SAKE THAT WOULD BE SUFFICIENT FOR

1 ME. 263, THANK YOU. THAT'S ALL.

2 Q. DR. KITCHENS, DO YOU RECOGNIZE THIS AS A TRUE
3 AND CORRECT COPY OF AN E-MAIL THAT WAS SENT TO YOU ON
4 SEPTEMBER 2ND, 2022?

5 A. IT APPEARS TO BE CORRECT.

6 MS. MEW: YOUR HONOR, DEFENDANT OFFERS
7 EXHIBIT DX 78 INTO EVIDENCE?

8 THE COURT: DR. KITCHENS?

9 DR. KITCHENS: YOUR HONOR, I'M NOT SURE
10 IF I WANT TO CONTEST TO THAT. BASED ON THE --

11 THE COURT: WHAT IS THE CONCERN?

12 DR. KITCHENS: THE CONCERN IS THAT THE
13 INFORMATION CAN BE MISCONSTRUED OF THESE WORDS HERE.

14 THE COURT: WELL, THERE ARE TWO WAYS FOR
15 YOU TO ADDRESS THAT CONCERN. ONE IS ON REDIRECT DURING
16 THIS BLOCK OF TESTIMONY WHEN YOU HAVE A CHANCE TO RE
17 DIRECT YOU CAN SPEAK TO IT, OR TWO IS IF IT'S SOMETHING
18 THAT GETS DEALT WITH IN POST TRIAL BRIEFING YOU CAN
19 ARGUE BUT YOU WILL HAVE A CHANCE.

20 DR. KITCHENS: OKAY. THEN IN THAT CASE
21 -- SORRY, YOUR HONOR.

22 THE COURT: WELL, I WAS WAITING. ARE YOU
23 GOING TO SAY NO OBJECTION?

24 DR. KITCHENS: SURE, YES. NO OBJECTION.

25 THE COURT: ALL RIGHT. DX 78 IS

1 ADMITTED.

2 (DEFENSE EXHIBIT 78 IS ADMITTED INTO
3 EVIDENCE.)

4 (OFF THE RECORD DISCUSSION.)

5 THE COURT: GIVEN MY OWN TIME RESTRAINTS
6 I NEED TO BREAK OFF FROM THIS ABOUT 4:45, SO THIS IS A
7 GOOD TIME TO BREAK TO LEAVE IT ONE LITTLE BLOCK. WHY
8 DON'T WE TAKE A BREAK NOW AND LET'S MAKE IT -- LETS COME
9 BACK AT MAKE TEN MINUTES.

10 COME BACK IN TEN MINUTES AND SINCE YOU
11 ARE ON CROSS EXAMINATION, DR. KITCHENS, YOU SHOULD NOT
12 BE DISCUSSING YOUR TESTIMONY DURING THIS BREAK; OKAY?

13 DR. KITCHENS: UNDERSTOOD, JUDGE.

14 THE COURT: OKAY. THANK YOU.

15 (SHORT RECESS TAKEN.)

16 THE COURT: ALL RIGHT. MS. MEW, DR.
17 KITCHENS, ARE YOU BOTH READY?

18 DR. KITCHENS: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT JUST A REMINDER,
20 DR. KITCHENS, YOU ARE STILL UNDER OATH.

21 AND MS. MEW, YOU MAY RESUME.

22 MS. MEW: THANK YOU, YOUR HONOR.

23 BY MS. MEW:

24 Q. IF WE COULD PULL BACK UP DX 78?

25 SO IF YOU LOOK AT THE SECOND TO LAST

1 PARAGRAPH, DR. KITCHENS?

2 A. YES, I CAN SEE IT.

3 Q. THANK YOU. NBME IS INFORMING YOU THAT YOU NEED
4 TO SEND IN NEW DOCUMENTATION TO SUPPORT YOUR CURRENT
5 REQUEST; CORRECT?

6 A. THEY ARE WANTING MORE QUANTITY OF DOCUMENTATION.

7 Q. NO, JUST -- I WILL JUST READ IT.

8 THEY SAY YOU WILL NEED TO SEND IN NEW
9 DOCUMENTATION TO SUPPORT YOUR CURRENT REQUEST.

10 A. SO MY UNDERSTANDING FROM THAT IS THAT THEY ARE
11 -- THAT THEY ARE MEANING MORE QUANTITY OF DOCUMENTATION,
12 SO YES.

13 Q. THEY WERE REQUESTING SOMETHING IN ADDITION TO
14 WHAT YOU SUBMITTED IN SUPPORT OF YOUR ORIGINAL REQUEST;
15 CORRECT?

16 A. THEY WANTED MORE DOCUMENTS, YES.

17 Q. AND THEY -- NBME ENCOURAGED YOU TO REVIEW THE
18 USMLE GUIDELINES FOR REQUESTING TEST ACCOMMODATIONS TO
19 GET SPECIFIC GUIDELINES FOR REQUESTING ON THE BASIS OF A
20 NEURO DEVELOPMENTAL DISORDER SUCH AS ADHD?

21 A. THIS APPEARS TO BE CORRECT.

22 Q. AND THEN, IF YOU GO AND LOOK AT THE FINAL
23 PARAGRAPH, IT EXPLAINS, "NBME WILL CONTINUE PROCESSING
24 YOUR REQUEST AS SOON AS IT RECEIVES A RESPONSE FROM YOU
25 INDICATING WHETHER YOU WOULD LIKE US TO RELEASE THE HOLD

1 ON YOUR SCHEDULING PERMIT FOR A STANDARD EXAMINATION, OR
2 WAIT FOR ADDITIONAL DOCUMENTATION TO CONTINUE PROCESSING
3 YOUR REQUEST FOR BREAK TIME AND ADDITIONAL TEST TIME."

4 DO YOU SEE THAT LANGUAGE?

5 A. YES, I DO SEE THAT LANGUAGE.

6 Q. AND YOU CHOSE IN RESPONSE TO RELEASE THE HOLD
7 AND TO TEST UNDER STANDARD CONDITIONS; CORRECT?

8 A. CAN YOU SHOW ME THAT?

9 Q. YES. LET'S PULL UP DX 79?

10 A. EXCUSE ME BEFORE YOU MOVE ON, CAN YOU TELL ME
11 WHAT PAGE THIS IS, WHAT BATES STAMP THIS IS?

12 Q. FOR DX 78 OR DX 79?

13 A. FOR DX 78, PLEASE.

14 Q. NBME 263.

15 A. THANK YOU.

16 Q. SO LET'S GO TO DX 79. THIS IS NBME 265, IS THE
17 FIRST PAGE, DR. KITCHENS, AND IF YOU CAN SCROLL TO THE
18 TOP SO WE CAN IDENTIFY IT.

19 ITS AN E-MAIL STRING AND THE E-MAIL AT
20 THE TOP IS SEPTEMBER 7TH, 2022, E-MAIL FROM YOU TO
21 DISABILITY SERVICES AT NBME; IS THAT CORRECT?

22 A. I'M SORRY, CAN YOU SAY YOUR QUESTION AGAIN? I'M
23 SORRY MS. MEW.

24 Q. IF YOU LOOK UNDER ORIGINAL MESSAGE THERE, THIS
25 E-MAIL AT THE TOP IS A SEPTEMBER 27TH, 2022, E-MAIL FROM

1 YOU TO DISABILITY SERVICES AT NBME.ORG; IS THAT CORRECT?

2 A. YES, I DO SEE THAT AND OUT OF FRUSTRATION THAT'S
3 WHY IT IS VERY SHORT AND POINTED, RELEASE HOLD.

4 Q. OKAY. FIRST -- FIRST -- DR. KITCHENS, FIRST,
5 I'M JUST TRYING TO ADMIT THIS DOCUMENT INTO EVIDENCE.

6 SO DO YOU AGREE THAT EXHIBIT JX -- I'M
7 SORRY, SCRATCH THAT.

8 DO YOU AGREE THAT DX 79 IS A TRUE AND
9 CORRECT COPY OF THE E-MAIL COMMUNICATIONS BETWEEN YOU
10 AND NBME?

11 A. YES.

12 MS. MEW: YOUR HONOR, DEFENDANT SEEKS
13 ADMISSION OF EXHIBIT DX 79.

14 DR. KITCHENS: NO OBJECTION. I'M SORRY,
15 YOUR HONOR, NO OBJECTION.

16 THE COURT: DX 79 ADMITTED.

17 (DEFENSE EXHIBIT 79 IS ADMITTED INTO
18 EVIDENCE.)

19 BY MS. MEW:

20 Q. SO REGARDLESS OF THE REASON, YOU RESPONDED,
21 "RELEASE HOLD;" CORRECT?

22 A. I HAD NO OTHER CHOICE, SO YES.

23 Q. YOU CAN TAKE THAT DOWN.

24 AND SO AFTER THAT, YOU TOOK THE STEP 1
25 EXAM FOR A THIRD TIME ON SEPTEMBER 29, 2022, UNDER

1 STANDARD CONDITIONS; CORRECT?

2 A. SOUNDS CORRECT.

3 Q. AND DID YOU NOT PASS?

4 A. THIS IS CORRECT, I DID NOT PASS ON THAT EXAM.

5 Q. BUT YOU FELT GOOD ABOUT YOUR PERFORMANCE AFTER
6 YOU TOOK THE TEST A THIRD TIME; CORRECT?

7 A. AGAIN, SAME LANGUAGE HAS BEEN USED THE ENTIRE
8 THE ENTIRE TIME, ASKED AND ANSWERED ON THAT, THAT I HAVE
9 -- THAT RESPONDED TO THAT E-MAIL OR HOWEVER, OUT OF
10 FRUSTRATION, AND TO TRY TO GET SOMEONE TO ACTUALLY
11 RECOGNIZE SO -- NO.

12 Q. I THINK I AM ASKING ABOUT SOMETHING DIFFERENT.
13 SO LET'S JUST DO THIS, DR. KITCHENS, LET'S PULL UP DX
14 89. IF YOU COULD JUST SCROLL DOWN SO WE CAN SEE THIS
15 DOCUMENT.

16 DR. KITCHENS, DO YOU RECOGNIZE THIS
17 DOCUMENT?

18 A. YES.

19 Q. IS THIS TRUE AND CORRECT COPY OF AN E-MAIL THAT
20 AMELIA KITCHENS WROTE TO THE ECFMG, ATTACHING A LETTER
21 DATED OCTOBER 3RD, 2022, AND YOU CAN SCROLL DOWN TO SEE
22 THE LETTER.

23 A. CAN YOU SCROLL DOWN SOME MORE SO I CAN -- YES,
24 THIS IS A LETTER I DID ASK FOR MY WIFE TO SUBMIT ON MY
25 BEHALF. OUT OF THE FACT THAT I FELT THAT, AS HER BEING

1 A LAWYER, THEY WOULD ACTUALLY LISTEN TO A LITTLE PERSON
2 BECAUSE JUST ME, WHO KNOWS.

3 Q. LET ME JUST ASK YOU FIRST, DR. KITCHENS,
4 DEFENDANTS SEEKS TO ADMIT EXHIBIT DX 89 INTO EVIDENCE?

5 DR. KITCHENS: NO OBJECTION.

6 THE COURT: ADMITTED.

7 (DEFENSE EXHIBIT 89 IS ADMITTED INTO
8 EVIDENCE.)

9 BY MS. MEW:

10 Q. IF WE LOOK AT THE SECOND PARAGRAPH OF THE
11 LETTER. THE SECOND SENTENCE READS, "AS OF THE DATE OF
12 THIS LETTER, DR. KITCHENS HAS SAT FOR STEP 1 FOR THE
13 THIRD TIME, TO WHICH HE BELIEVES WAS A REASONABLE
14 MEASURE OF THE PROFICIENCY AND KNOWLEDGE, SHOULD THE
15 TEST BE IMPROPERLY SCORED AGAIN MY CLIENT HAS AUTHORIZED
16 ME TO FILE SUIT AGAINST YOU."

17 DID YOU AUTHORIZE AMELIA KITCHENS TO SEND
18 THIS LETTER WITH THIS STATEMENT TO THE ECFMG?

19 A. THIS IS A LETTER THAT I ASKED -- AND THE REASON
20 THAT THIS LANGUAGE IS ACTUALLY PUT IN THERE BECAUSE OF
21 THE DISTRUST IN THE GRADING SYSTEM AND THAT WAS THE
22 REASON WHY I WANTED HER TO MAKE SURE THAT IT WAS QUITE
23 CLEAR TO THE NBME THAT OTHER ACTIONS NEEDS TO BE SHOWN
24 TO PROVE THAT THE SCORE WAS CORRECT.

25 MS. MEW: YOUR HONOR, I HAVEN'T --

1 THE WITNESS: THIS IS REASON WHY I HAD --
2 I ASKED HER TO DO THAT. AND I UNDERSTAND YOU WANT ME TO
3 JUST SAY YES OR NO, BUT IT'S MORE TO IT.

4 MS. MEW: WELL, YOUR HONOR, I AM GOING TO
5 RAISE THIS WITH THE JUDGE IT'S ALSO JUST TAKING A LOT OF
6 TIME I JUST ASKED THE QUESTION IF HE AUTHORED THE LETTER
7 TO BE SENT AND I WOULD LIKE TO MOVE TO STRIKE THE LAST
8 ANSWER AND WE CAN START OVER.

9 THE COURT: SURE. I AM NOT GOING TO
10 STRIKE IT BUT YEAH, DR. KITCHENS, VERY GOOD EXAMPLE I
11 HEARD YOU SAY YES AT THE END, WHICH IS THE APPROPRIATE
12 RESPONSE IF YOU WOULD LIKE TO GIVE SOME CONTEXT TO THIS
13 LETTER IN YOUR REDIRECT YOU WILL HAVE THAT OPPORTUNITY.

14 DR. KITCHENS: YES, JUDGE.

15 BY MS. MEW:

16 Q. JUST SO THE RECORD IS CLEAR, DR. KITCHENS, THE
17 SENTENCE THAT I READ, THE SECOND SENTENCE OF THE SECOND
18 PARAGRAPH, THIS IS SOMETHING THAT YOU AUTHORIZED AMELIA
19 KITCHENS TO WRITE TO ECFMG ON YOUR BEHALF; CORRECT?

20 A. YES, I DID.

21 Q. DR. KITCHENS, IT'S MY UNDERSTANDING THAT ONE OF
22 YOUR CONTENTIONS IN THIS LAWSUIT IS THAT CONTENTIONS
23 THAT THE DOCUMENT THAT YOU SUBMITTED TO NBME IN SUPPORT
24 OF YOUR 2022 ACCOMMODATION REQUEST PROVIDED ENOUGH
25 INFORMATION TO SHOW THAT YOU WERE DISABLED AND ENTITLED

1 TO ACCOMMODATION ON THE STEP 1 EXAMS.

2 IS THAT FAIR TO SAY?

3 A. YES.

4 Q. IF WE CAN PULL UP PX 2?

5 THIS IS ALREADY BEEN ADMITTED, DR.

6 KITCHENS. THIS, I THINK, HAS ALL BEEN ROUNDLY AGREED

7 THAT THIS IS THE FIRST ACCOMMODATION REQUEST THAT YOU

8 SUBMITTED TO NBME?

9 A. YES, THIS IS CORRECT.

10 Q. OH, I HAVE THE WRONG ONE. SORRY. I THINK THIS
11 IS SETTING THE -- I WANTED -- SCRATCH THAT DR. KITCHENS,
12 I AM SORRY. I AM TRYING TO USE YOUR DOCUMENT NUMBERS
13 INSTEAD OF MINE AND I AM A LITTLE BEHIND.

14 A. THAT'S OKAY.

15 Q. IF WE CAN PULL UP PX 3. LET'S START AGAIN.

16 THIS DOCUMENT, DR. KITCHENS, I THINK WE
17 HAVE ALL AGREED IS THE FIRST ACCOMMODATION REQUEST THAT
18 YOU SUBMITTED TO NBME.

19 I AM SO SORRY. I APOLOGIZE TO THE COURT
20 AND TO YOU, DR. KITCHENS, I THINK IT'S JUST -- I THINK I
21 AM A LITTLE TIRED.

22 LET'S GO BACK TO PX 2. MY APOLOGIES.

23 A. OH, NO. YOU ARE FINE. I DON'T EVEN KNOW WHAT
24 YOU ARE APOLOGIZING FOR.

25 Q. I AM APOLOGIZING, DR. KITCHENS, BECAUSE I WAS

1 RIGHT THE FIRST TIME. I THINK I SEE THAT OCTOBER DATE
2 AND IT GETS ME OFF.

3 A. THAT'S OKAY.

4 Q. IT GETS CONFUSING WITH AUGUST. MY APOLOGIES TO
5 ALL.

6 A. OKAY. NO PROBLEM.

7 Q. OKAY. SO NOW HERE, YOUR FIRST ACCOMMODATION
8 REQUEST TO NBME; CORRECT?

9 A. YES.

10 Q. AND JUST ONE POINT, JUST TO MAKE SURE THAT
11 RECORD IS CLEAR, IN ADDITION TO THE DOCUMENTS THAT ARE
12 IN THIS EXHIBIT, IT'S ACCURATE THAT NBME REACHED OUT AND
13 ASKED FOR SOME ADDITIONAL DOCUMENTS AND YOU DID PROVIDE
14 A COPY OF YOUR DECEMBER, 2020, CBSE SCORE REPORT;
15 CORRECT?

16 A. CAN YOU SCROLL DOWN?

17 Q. IT'S NOT IN HERE. SO THIS HAS THE DOCUMENTS I
18 THINK THAT YOU INITIALLY SUBMITTED. AND THEN NBME CAME
19 BACK AND ASKED YOU FOR CERTAIN DOCUMENTS AND THEN YOU
20 SUBSEQUENTLY PROVIDED YOUR DECEMBER, 2020, CBSE SCORE
21 REPORTS; CORRECT?

22 A. YES, I DID. I FOUND THAT IN MY E-MAIL THAT'S
23 WHY THERE WAS THE CONFIRMATION.

24 Q. OKAY. AND IF WE CAN GO TO PAGE 6 OF THIS
25 DOCUMENT.

1 THE ACCOMMODATION REQUEST FORM IS DATED
2 OCTOBER 13, 2021; CORRECT, DR. KITCHENS?

3 A. CAN YOU HAVE YOUR ASSISTANT ZOOM IN, PLEASE?

4 YES. 10-13-2021.

5 Q. BUT YOU ACTUALLY DID NOT SUBMIT YOUR REQUEST TO
6 NBME UNTIL JANUARY 5TH, 2022; CORRECT?

7 A. I E-MAILED MY DOCUMENTS TO THEM IN OCTOBER.

8 Q. LETS PULL UP --

9 A. AND THEN THAT'S WHEN I RECEIVED -- THERE WAS AN
10 E-MAIL COMMUNICATION FOR MY REQUEST.

11 Q. LET'S PULL UP DX 81.

12 AND IF YOU CAN SCROLL DOWN SO WE CAN SEE
13 THE START. THAT'S OKAY, YOU CAN GO ALL THE WAY THROUGH.

14 OKAY. LET'S GO TO PAGE 2. AND THEN
15 SCROLL UP JUST A LITTLE BIT.

16 SO I KNOW THAT THERE IS A HEADER.

17 WHAT IS THE DATE?

18 A. WHAT IS THE DATE?

19 Q. SO HERE AT THE BOTTOM WE SEE FRIDAY, OCTOBER 22,
20 2021, AN E-MAIL FROM YOU TO INFO@ECFMG AND ECFMG ONLINE
21 SERVICES.

22 DO YOU SEE THAT?

23 A. YES, I DO.

24 Q. AND I'M NOT SURE IF WE HAVE GOT THIS SPELLED OUT
25 YET IN THE RECORD BUT ECFMG IS THE EDUCATIONAL

1 COMMISSION FOR FOREIGN MEDICAL GRADUATES; IS THAT
2 CORRECT?

3 A. YES.

4 Q. OKAY. SO IF WE SCROLL DOWN NOW, JUST TO THIS.

5 SO IS THIS THE E-MAIL YOU ARE TALKING
6 ABOUT THAT YOU SENT IN OCTOBER, 2021?

7 A. IN ITS ENTIRETY? THERE SHOULD HAVE BEEN A LINK
8 WITH MY APPLICATION THERE, WHICH I THINK I RECEIVED AN
9 AN E-MAIL BACK STATING THAT IT COULD NOT OPEN THE LINK.

10 Q. YOU HAVE ATTACHED SEVERAL DOCUMENTS SO WE CAN
11 SCROLL DOWN AND WE CAN SEE WHAT YOU HAVE ATTACHED.

12 A. UH-HUH.

13 Q. OKAY. AND THEN IF WE GO BACK UP TO PAGE 1.

14 THIS IS AN E-MAIL DATED NOVEMBER 9, 2021,
15 TO YOUR E-MAIL ADDRESS AND IT'S COMING IN AGAIN FROM
16 INFO@ECFMG.ORG.

17 DO YOU WANT TO TAKE A MINUTE TO READ THIS
18 E-MAIL?

19 A. I CAN'T.

20 Q. CAN YOU EXPAND IT?

21 A. YES, PLEASE. THAT'S ALL RIGHT.

22 Q. IF YOU CAN SCROLL DOWN SO HE CAN SEE THE TEXT?

23 A. YES, I RECOGNIZE THIS.

24 Q. OKAY. AND JUST IN THE INTEREST OF TRYING TO
25 MOVE THIS ALONG, IS IT FAIR TO SAY THAT ECFMG RESPONDED

1 TO YOUR OCTOBER E-MAIL AND EXPLAINED THAT YOU NEEDED TO
2 APPLY THROUGH NBME FOR TESTING ACCOMMODATIONS?

3 A. AND -- THAT I NEEDED TO APPLY THROUGH NBME?
4 YES.

5 Q. OKAY.

6 A. I SEE THAT AT THE BOTTOM.

7 Q. AND THEY -- THEY TOLD TO YOU CONTACT DISABILITY
8 SERVICES TO APPLY AND SUBMIT DOCUMENTATION, AND THEY
9 ALSO TOLD TO YOU VISIT THE WEBSITE GIVEN FOR MORE
10 INFORMATION ABOUT THE GUIDELINES QUALIFICATIONS AND
11 APPLICATION PROCEDURE FOR REQUESTING TESTING
12 ACCOMMODATIONS.

13 A. I DO SEE THAT.

14 MS. MEW: YOUR HONOR, WE WOULD MOVE TO
15 ADMIT EXHIBIT DX 81 INTO EVIDENCE.

16 DR. KITCHENS: NO OBJECTION.

17 THE COURT: ADMITTED.

18 (DEFENSE EXHIBIT 81 IS ADMITTED INTO
19 EVIDENCE.)

20 BY MS. MEW:

21 Q. NOW IF WE PULL UP DX 69. SO IF WE CAN JUST
22 SCROLL UP A LITTLE BIT TO THE TOP OF PAGE 2.

23 SO YOU WILL SEE DR. KITCHENS, THERE IS AN
24 E-MAIL FROM YOUR E-MAIL ADDRESS SENT ON JANUARY 5TH,
25 2022, TO DISABILITYSERVICES@NBME.ORG, AND THEN WE WILL

1 SCROLL DOWN. IT SAYS "ATTACHED TO THIS E-MAIL ARE ALL
2 COMPONENTS REQUESTED IN THE APPLICATION FOR USMLE STEP 1
3 ACCOMMODATIONS."

4 A. YES.

5 Q. AND DO YOU RECOGNIZE THIS AS THE E-MAIL YOU SENT
6 ON JANUARY 5TH, 2022, WHERE YOU SENT YOUR ACCOMMODATION
7 REQUEST TO NBME?

8 A. IS THERE CLOUD LINK? YES, I SEE THE CLOUD LINK
9 THERE, YES.

10 Q. OKAY. AND IN THE INTEREST OF COMPLETENESS WE
11 WILL GO UP TO THE TOP.

12 AND IF YOU REMEMBER, DR. KITCHENS, THEY
13 EXPLAIN THAT IT COULDN'T -- THEY NEEDED YOU TO RE SEND
14 IT, I THINK IT WAS ENCRYPTED, AND SO NOW YOU SENT IT
15 AGAIN WITH SOME PDF FILES?

16 A. YES, I REMEMBER THAT.

17 Q. OKAY. SO THE E-MAIL AT THE TOP OF THIS PAGE IS,
18 AGAIN, A JANUARY 5TH, 2022, E-MAIL FROM DR. KITCHENS TO
19 DISABILITY SERVICES@NBME.ORG.

20 MS. MEW: DEFENDANT MOVES TO ADMIT DX 69
21 INTO EVIDENCE?

22 DR. KITCHENS: NO OBJECTIONS.

23 THE COURT: ADMITTED.

24 (DEFENSE EXHIBIT 69 IS ADMITTED INTO
25 EVIDENCE.)

1 BY MS. MEW:

2 Q. IF WE CAN PULL UP DX 71? SO JUST TO IDENTIFY
3 THIS DOCUMENT, THE FIRST E-MAIL IN THE E-MAIL STRING IS
4 A JANUARY 8TH, 2022, E-MAIL FROM MARKCUS KITCHENS TO
5 DISABILITY SERVICES AT NBME.ORG, AND THEN THE SECOND
6 E-MAIL IN THE STREAM IS A JANUARY 6TH, 2022, E-MAIL FROM
7 DISABILITY SERVICES TO DR. KITCHENS.

8 A. YES.

9 Q. IS THIS A TRUE AND CORRECT COPY OF AN E-MAIL
10 STRING BETWEEN YOU AND NBME?

11 A. CAN YOU STOP HERE PLEASE SO I CAN MAKE SURE OF
12 THIS PARTICULAR PART HERE? OKAY. YES.

13 MS. MEW: OKAY. AND JUST, FIRST,
14 DEFENDANT MOVES TO ADMIT DX 71?

15 DR. KITCHENS: NO OBJECTIONS.

16 MS. MEW: YOU'RE ON MUTE, YOUR HONOR.

17 THE COURT: THANK YOU. ADMITTED.

18 (DEFENSE EXHIBIT 71 IS ADMITTED INTO
19 EVIDENCE.)

20 BY MS. MEW:

21 Q. DR. KITCHENS, AFTER YOU SUBMITTED YOUR
22 ACCOMMODATION REQUEST, NBME SENT YOU AN E-MAIL AND
23 REQUESTED ADDITIONAL DOCUMENTATION FROM YOU; IS THAT
24 CORRECT?

25 A. CAN YOU SAY YOUR QUESTION AGAIN, PLEASE.

1 Q. AFTER YOU SUBMITTED YOUR FIRST ACCOMMODATION
2 REQUEST ON JANUARY 5TH, 2022, NBME E-MAILED YOU AND
3 ASKED YOU TO PLEASE SUBMIT SOME ADDITIONAL
4 DOCUMENTATION.

5 DO YOU REMEMBER THAT? AND WE CAN SCROLL
6 DOWN TO THE E-MAIL. IT'S NOT A MYSTERY.

7 A. RIGHT. THEY DID.

8 Q. I JUST WANTED YOU TO HAVE A CHANCE TO SEE IT.

9 A. OH, OKAY. SO YES, THEY DID ASK FOR MORE
10 QUANTITY OF DOCUMENTATION.

11 Q. IF WE KEEP SCROLLING DOWN A LITTLE BIT, PLEASE?

12 OKAY. AT THE BOTTOM OF THIS PAGE, DO YOU
13 SEE WHERE IT SAYS, "BEFORE WE CAN BEGIN TO REVIEW YOUR
14 REQUEST PLEASE DO THE FOLLOWING: HAVE THE APPROPRIATE
15 OFFICIAL AT YOUR MEDICAL SCHOOL COMPLETE A USMLE
16 CERTIFICATION OF PRIOR TEST ACCOMMODATIONS FORM."

17 AND THEN THERE IS A LINK.

18 DO YOU SEE THAT LANGUAGE?

19 A. I DO SEE THIS LANGUAGE.

20 Q. AND SO IS IT FAIR TO SAY THAT NBME WAS ASKING TO
21 YOU PLEASE SUBMIT A C.P.T.A. FORM FROM YOUR MEDICAL
22 SCHOOL?

23 A. AND I INFORMED THEM THAT I DID NOT HAVE ACCESS
24 TO THAT.

25 Q. AND WE WILL GET -- DID THEY ASK FOR THIS?

1 A. YES, I UNDERSTAND.

2 Q. THANK YOU. AND SO IF WE CAN PULL UP DX 62?

3 ARE YOU FAMILIAR WITH THE C.P.T.A. FORM,
4 DR. KITCHENS?

5 A. I DON'T RECALL. CAN YOU ZOOM IN ON THIS? NO,
6 I DON'T NECESSARILY RECALL THIS DOCUMENT.

7 Q. IS IT FAIR TO SAY THAT YOU OBJECTED TO PROVIDING
8 A C.P.T.A. FORM WITH YOUR ACCOMMODATION REQUEST?

9 A. NO, I THINK THAT'S AN INACCURATE REPRESENTATION.
10 I INFORMED THEM THAT I DID NOT HAVE ACCESS TO THAT SO I
11 COULDN'T DO THAT.

12 Q. SO -- AND ITS YOUR POSITION YOU COULD NOT GO TO
13 YOUR MEDICAL SCHOOL AND ASK THEM TO FILL OUT A FORM LIKE
14 THAT?

15 A. NO, THAT WOULD REQUIRE ABOUT \$2,500 FOR A PLANE
16 TICKET. NO, I COULD NOT.

17 Q. IF WE LOOK AT EXHIBIT PX 3.

18 THAT'S FINE. ALL I AM TRYING TO DO IS
19 GET THE POINT IN TIME THAT YOU -- FOR YOUR SECOND
20 ACCOMMODATION REQUEST.

21 A. YES.

22 Q. YOU -- YOU SENT IN A SECOND ACCOMMODATION
23 REQUEST IN AUGUST OF 2022?

24 A. YES.

25 Q. AND YOU DID NOT INCLUDE ANY NEW DOCUMENTATION

1 COMPARED TO WHAT YOU SENT IN WITH YOUR JANUARY, 2022,
2 REQUEST; CORRECT?

3 A. I HAD NO NEW DOCUMENTATION, THAT IS CORRECT.

4 Q. AND YOU HAVE NOT SUBMITTED ANY OTHER
5 ACCOMMODATION REQUESTS TO NBME SINCE AUGUST OF 2022;
6 CORRECT?

7 A. I HAVE NOT.

8 Q. WE CAN TAKE THIS DOWN.

9 DURING THE COURSE OF THIS LITIGATION, DR.
10 KITCHENS, YOU HAVE OBTAINED ADDITIONAL MEDICAL AND
11 EDUCATIONAL RECORDS; CORRECT?

12 A. YES.

13 Q. SO IF WE LOOK AT DX 7? SO WE HAVE SCROLLED
14 THROUGH THE DOCUMENT AND IF WE GO BACK TO PAGE 1.

15 A. YES, I ASSUME ALL WAS CORRECT.

16 Q. IS THIS A TRUE AND CORRECT COPY OF A REQUEST
17 FORM THAT YOU SENT TO WHITE HOUSE CLINICS IN LATE
18 JANUARY, 2023, AND A COPY OF THE DOCUMENTS THAT YOU
19 RECEIVED?

20 A. IT APPEARS THAT WAY.

21 Q. AGAIN, THIS IS AT DX 7.

22 MS. MEW: DEFENDANT MOVES TO ADMIT
23 EXHIBIT DX 7.

24 DR. KITCHENS: NO OBJECTIONS.

25 THE COURT: ADMITTED.

1 (DEFENSE EXHIBIT 7 IS ADMITTED INTO
2 EVIDENCE.)

3 BY MS. MEW:

4 Q. IF WE SCROLL DOWN TO THE BOTTOM OF THIS PAGE,
5 THIS FIRST PAGE, AND WE CAN ZOOM A LITTLE BIT, I WANT
6 YOU TO JUST SEE YOUR SIGNATURE DATE, DR. KITCHENS.

7 A. YES, I AM AWARE. I THINK THIS WAS DUE TO --
8 YES, I THINK THIS WAS IN PART OF PRODUCING DOCUMENTATION
9 FOR LITIGATION, YES.

10 Q. CORRECT. SO IT LOOKS LIKE AROUND JANUARY 31ST,
11 2023, YOU SENT THIS FORM TO WHITE HOUSE CLINICS TO
12 OBTAIN YOUR MEDICAL RECORDS; IS THAT CORRECT?

13 A. THIS IS CORRECT.

14 Q. AND THEN IF SCROLL UP TO THE TOP OF THIS PAGE, I
15 THINK YOU ALLUDED TO THIS ALREADY.

16 THIS IS MATERIAL THAT YOU THEN SUBMITTED
17 TO THE COURT IN SUPPORT OF THIS LITIGATION; CORRECT?

18 A. AND ALL DOCUMENTATION THAT WAS ALSO SUBMITTED
19 WITH MY -- MY RECOMMENDATION THAT WAS RELEVANT TO MY
20 DISABILITY WITH ADHD. THERE WAS NO NEW DOCUMENTATION
21 THAT CAME FROM THIS ENTITY IN LITIGATION.

22 Q. LET'S DO THIS FIRST. I'M GOING TO I WANT TO ASK
23 MY QUESTION AND IF YOU SCROLL UP, PLEASE TO THE TOP OF
24 THE DOCUMENT.

25 YOU SENT YOUR REQUEST IN -- I THINK WE

1 ESTABLISHED, DR. KITCHENS, WAS SOMEWHERE AROUND
2 JANUARY 31ST, 2023, AND LESS THAN TWO WEEKS LATER YOU
3 HAD THESE DOCUMENTS TO SUBMIT TO THE COURT; CORRECT.

4 A. YES, THIS IS CORRECT.

5 Q. AND YOU ARE RELYING ON ALL OF THESE DOCUMENTS IN
6 SUPPORT OF THIS LITIGATION?

7 A. YES. WELL, PARTS OF -- I AM SUBMITTING AND
8 CORRECT REPRESENTATION OF THAT I AM SUBMITTING PARTS OF
9 THIS DOCUMENTATION. THE MAJORITY OF IT IS NOT RELEVANT
10 TO THE CASE.

11 Q. IF YOU COULD HAVE EASILY OBTAINED THIS COMPLETE
12 SET OF WHITE HOUSE CLINICS RECORDS TO PROVIDE WITH YOUR
13 TESTING ACCOMMODATION REQUESTS; CORRECT, JUST LIKE YOU
14 -- JUST LIKE YOU OBTAINED IT TO SUBMIT TO THE COURT?

15 A. BUT I WOULD NOT HAVE DONE THAT. IT'S NOT
16 RELEVANT TO IT, SO NO I WOULD NOT HAVE DONE THAT. I
17 WOULD NOT HAVE SENT IN THIS DOCUMENT TO THE NBME, FOR
18 ANY REASON. BUT IN PARTS OF IT THAT TALKS ABOUT THE
19 DISABILITY THAT WAS AT HAND FOR THE ACCOMMODATIONS, I
20 WOULD HAVE AND DID.

21 Q. I AM TRYING TO THINK OF -- I WILL JUST TELL YOU,
22 YOUR HONOR, AND DR. KITCHENS, I HAVE A NUMBER OF
23 DOCUMENTS FROM BAPTIST HEALTH BUT I JUST -- FOR RIGHT
24 NOW I JUST WANT TO PROVE THEM UP AND THEN ASK YOU A
25 QUESTION ABOUT THEM.

1 I AM TRYING TO THINK IF THERE IS AN
2 EFFICIENT WAY ABOUT GOING ABOUT DOING THIS THESE. THESE
3 ARE DOCUMENTS THAT WERE PROVIDED TO YOU WITH OUR EXHIBIT
4 DISCLOSURES LAST WEDNESDAY, DR. KITCHENS. AND I
5 CERTAINLY WANT YOU TO BE COMFORTABLE WITH ALL OF THEM
6 BUT IT'S GOING TO BE ABOUT -- ABOUT 11 DOCUMENTS THAT WE
7 NEED TO GO THROUGH; OKAY?

8 A. THAT'S JUST FINE.

9 THE COURT: SO, YEAH, WE CAN DO IT THE
10 WAY WE HAVE BEEN DOING IT BUT ANOTHER OPTION, IF YOU
11 WANT, IS YOU COULD JUST -- YOU COULD START BY ASKING --
12 YOU COULD JUST GO THROUGH IT AND ASK THE QUESTIONS YOU
13 WANT TO ASK AND ASSUMING THESE ARE PRETTY CONFIDENT,
14 THERE IS DOCUMENTS THAT ARE NOT GOING TO BE IN DISPUTE,
15 YOU CAN CONFER WITH DR. KITCHENS AND THEN DO AN
16 UNOPPOSED MOTION TOMORROW MORNING JUST MOVE THEM ALL IN,
17 SOMETHING LIKE THAT. IT'S UP TO YOU.

18 MS. MEW: NO, I -- LET'S SEE IF THAT
19 WORKS. SO I AM GOING TO PULL UP -- FIRST, WE WILL PULL
20 UP DX 20.

21 BY MS. MEW:

22 Q. AND DR. KITCHENS, I THINK WHAT I MIGHT DO IS WE
23 WILL JUST KIND OF SHOW THE FIRST PAGE AND AS JUDGE
24 MURPHY SUGGESTED PERHAPS WE CAN INFER -- YOU KNOW,
25 CONFIRM OFFLINE THEN BEFORE WE ADMIT IT.

1 I AM TRYING TO ESTABLISH THAT YOU
2 OBTAINED A NUMBER OF DOCUMENTS FROM BAPTIST HEALTH AS
3 PART OF THIS LITIGATION; CORRECT?

4 A. HONESTLY, I AM NOT SURE IF I AM EITHER
5 COMFORTABLE WITH -- YOU SAID OFFLINE? MEANING DURING --

6 Q. THAT WAS SO YOU AND I CAN REACH A STIPULATION
7 BUT YOU KNOW WHAT, DR. KITCHENS, LET'S JUST -- I AM JUST
8 TRYING TO BE EFFICIENT.

9 A. I UNDER- --

10 Q. LET'S JUST SAY THIS FOR NOW:

11 IN CONNECTION WITH THIS LITIGATION, YOU
12 REQUESTED DOCUMENTS FROM BAPTIST HEALTH; IS THAT
13 CORRECT?

14 A. YES, I DID REQUEST MEDICAL RECORDS FROM BAPTIST
15 HEALTH.

16 Q. AND YOU ARE NOW RELYING ON THOSE RECORDS IN THIS
17 LITIGATION; IS THAT CORRECT?

18 A. YES.

19 Q. BUT YOU DID NOT SUBMIT ANY REPORTS FROM BAPTIST
20 HEALTH TO NBME IN SUPPORT OF YOUR ACCOMMODATION REQUEST;
21 CORRECT?

22 A. I'M SORRY, I AM TRYING TO FOCUS ON THE YEAR.
23 LIKE YOU SAID, IT HAS BEEN A LONG DAY. I AM TRYING --

24 Q. WHY DON'T WE TAKE THIS DOWN.

25 JUST TO BE CLEAR, DR. KITCHENS, RIGHT NOW

1 I AM ASKING YOU JUST A VERY GENERAL QUESTION. AND I CAN
2 START FROM THE BEGINNING. SO I THINK WE JUST
3 ESTABLISHED THAT IN CONNECTION WITH THIS LITIGATION, YOU
4 REQUESTED DOCUMENTS FROM BAPTIST HEALTH; CORRECT?

5 A. YES, I DID.

6 Q. AND THEY PROVIDED DOCUMENTS TO YOU?

7 A. YES, THEY DID.

8 Q. AND THEN YOU ARE RELYING ON THOSE DOCUMENTS IN
9 THIS LITIGATION; CORRECT?

10 A. YES.

11 Q. BUT YOU DID NOT SUBMIT ANY RECORDS FROM BAPTIST
12 HEALTH TO NBME IN SUPPORT OF YOUR ACCOMMODATION
13 QUESTION?

14 A. NO.

15 Q. ALTHOUGH YOU COULD HAVE ASKED FOR YOUR RECORDS
16 IN THAT CONNECTION AND SUBMITTED THEM TO NBME, THAT
17 OPTION WAS AVAILABLE TO YOU?

18 A. IT'S ALL THE SAME -- IT'S ALL THE SAME
19 DIAGNOSES, SO IT WOULD JUST BE ME BASICALLY GOING OVER
20 THE SAME EXACT DOCUMENTS SAYING ADHD, ADHD, ADHD, SO OUT
21 OF RESPECT FOR THE NBME I DIDN'T FEEL THAT IT WAS
22 NECESSARY TO CONTINUE TO PRODUCE THE SAME DOCUMENT JUST
23 BECAUSE IT'S A DIFFERENT PLACE. THE SAME I WOULD NOT DO
24 HERE IN THE TRIAL, GO OVER THE SAME DOCUMENTS OVER AND
25 OVER.

1 THAT'S THE PROBLEM THE REASON THAT I
2 PROBABLY DID NOT SUBMIT THAT.

3 Q. I THINK WE'VE ALSO DISCUSSED PREVIOUSLY, DR.
4 KITCHENS, THAT YOU HAVE PRODUCED IN THIS LITIGATION
5 COPIES OF TRANSCRIPTS FROM ELEMENTARY SCHOOL, MIDDLE
6 SCHOOL, HIGH SCHOOL AND MEDICAL SCHOOL, AND YOU ARE
7 RELYING ON THOSE RECORDS IN THIS LITIGATION TO SUPPORT
8 YOUR ADA CLAIM; CORRECT?

9 A. YES.

10 Q. BUT YOU DID NOT PROVIDE ANY OF THOSE RECORDS TO
11 NBME WITH YOUR 2022 TESTING ACCOMMODATION REQUESTS?

12 A. IT DIDN'T COME TO MY MIND TO SUBMIT THOSE
13 DOCUMENTS.

14 Q. AND IN THE LITIGATION, YOU OBTAINED A
15 DECLARATION FROM YOUR MOTHER, MS. KING, WHICH YOU
16 PROVIDED IN SUPPORT OF YOUR MOTION FOR PRELIMINARY
17 INJUNCTION AND IN THIS DEC -- LET ME STOP THERE.

18 YOU OBTAINED A DECLARATION FOR YOUR MOM,
19 MS. KING, WHICH YOU SUBMITTED IN SUPPORT OF YOUR REQUEST
20 FOR TESTING ACCOMMODATIONS. STRIKE THAT, IT'S THE END
21 OF THE DAY.

22 YOU OBTAINED A DECLARATION FROM YOUR MOM,
23 MR. KING, THAT YOU SUBMITTED IN SUPPORT OF YOUR
24 PRELIMINARY INJUNCTION MOTION; IS THAT CORRECT?

25 A. YES, THIS IS CORRECT.

1 Q. AND IN THIS THIS DECLARATION, YOUR MOTHER
2 DISCUSSES ASPECTS OF YOUR CHILDHOOD THAT YOU THINK IS
3 RELEVANT FOR YOUR CLAIM FOR ACCOMMODATIONS IN THIS
4 LITIGATION; CORRECT?

5 A. THIS IS CORRECT.

6 Q. AND JUST SO WE KNOW WHAT WE ARE ALL TALKING
7 ABOUT LET'S PULL UP DX 4.

8 A. SORRY, I DON'T THINK I HAVE SAT DOWN FOR THIS
9 LONG BEFORE. GOSH, MY LEGS ARE KILLING ME.

10 Q. ONE OF THE BENEFITS OF BEING IN THE COURTROOM
11 INSTEAD, DR. KITCHENS, WE COULD BE STANDING AT THE
12 PODIUM SOME OF THE TIME.

13 A. YES, MA'AM. I CAN UNDERSTAND THAT.

14 YES, THIS LOOKS TO BE CORRECT.

15 MS. MEW: DEFENDANT WOULD ADMIT -- MOVES
16 TO ADMIT EXHIBIT DX 4?

17 DR. KITCHENS: POINT OF INFORMATION, YOUR
18 HONOR? I DON'T KNOW IF THAT'S THE RIGHT THING TO SAY.

19 THE COURT: GO AHEAD, DR. KITCHENS, THE
20 QUESTION OF WHETHER YOU OBJECT TO THE ADMISSION OF THE
21 DECLARATION.

22 DR. KITCHENS: YES, I HEARD THE QUESTION.
23 I GUESS MY QUESTION WAS, I GUESS IT WAS MY UNDERSTANDING
24 THAT WE COULDN'T PUT IN THE DECLARATION OF -- SORRY
25 BECAUSE SHE COULD HAVE BEEN CROSSED. SO OKAY, YES, YOU

1 MAY -- I AGREE TO THE -- NO OBJECTIONS. SORRY ABOUT
2 THAT JUDGE.

3 THE COURT: OKAY. ADMITTED.

4 (DEFENSE EXHIBIT 4 IS ADMITTED INTO
5 EVIDENCE.)

6 BY MS. MEW:

7 Q. AND THIS INFORMATION THAT MS. KING PROVIDES IN
8 HER DECLARATION IS INFORMATION THAT YOU COULD HAVE
9 PROVIDED TO NBME IN SUPPORT OF YOUR ACCOMMODATION
10 REQUEST BUT YOU DID NOT; CORRECT?

11 A. NO, I WAS NOT AWARE OF THESE THINGS AT THE TIME.

12 Q. SO YOU DIDN'T TALK TO YOUR MOTHER ABOUT
13 INFORMATION IN SUPPORT OF YOUR ACCOMMODATION REQUEST BUT
14 DID YOU TALK TO HER FOR INFORMATION AND SUPPORT OF YOUR
15 LITIGATION CLAIM?

16 A. WELL, THAT'S AN APPLES AND ORANGES. GOING
17 THROUGH A LITIGATION AND ACCOMMODATIONS ON A BOARD EXAM
18 AS AN ADULT -- NO, I DID NOT CALL MY MOM.

19 Q. YOU ALSO OBTAINED DECLARATION FROM ONE OF YOUR
20 COLLEGE PROFESSORS TO SUPPORT YOUR LITIGATION CLAIM; IS
21 THAT RIGHT?

22 A. YES.

23 Q. AND YOU COULD HAVE OBTAINED THE SAME INFORMATION
24 MAYBE IN A LETTER FROM THIS PROFESSOR AND SUBMITTED IN
25 IN SUPPORT OF YOUR ACCOMMODATION REQUEST TO NBME;

1 CORRECT?

2 A. IT NEVER RAN ACROSS MY MIND TO ASK A FORMER
3 PROFESSOR TO WRITE A LETTER OF RECOMMENDATION FOR ME FOR
4 THIS, NO.

5 Q. AND YOU PREPARED YOUR OWN DECLARATION IN SUPPORT
6 OF YOUR MOTION FOR PRELIMINARY INJUNCTION IN THIS CASE
7 DISCUSSING THINGS LIKE YOUR EARLY SCHOOL EXPERIENCES AND
8 YOUR EXPERIENCES ON OTHER STANDARDIZED TESTS; CORRECT?

9 A. YES, I DID.

10 Q. AND LET'S JUST GO AHEAD AND PULL THAT UP AT DX
11 3. WAIT A MINUTE, PAUSE.

12 A. THIS IS THE MEMORANDUM.

13 Q. IT IS. IT IS. THAT WAS THE WRONG ONE. THAT'S
14 ALL RIGHT WE CAN KEEP GOING. OH, YOU HAVE IT? OKAY.

15 THIS IS DX 3. CAN YOU FLIP THROUGH IT
16 REAL QUICK?

17 A. YES, THIS SEEMS TO BE CORRECT FOR TIME SAKE.

18 MS. MEW: DEFENDANT SEEKS ADMISSION OF DX
19 3 INTO EVIDENCE?

20 DR. KITCHENS: NO OBJECTIONS.

21 THE COURT: ADMITTED.

22 (DEFENSE EXHIBIT 3 IS ADMITTED INTO
23 EVIDENCE.)

24 BY MS. MEW:

25 Q. AND THE INFORMATION IN THIS DECLARATION IS

1 INFORMATION THAT YOU COULD HAVE PROVIDED IN YOUR
2 PERSONAL STATEMENT TO NBME; CORRECT?

3 A. I SUBMITTED EVERYTHING AT THE TIME THAT I
4 THOUGHT WAS NECESSARY TO GO INTO MY PERSONAL STATEMENT,
5 AS I TESTIFIED EARLIER.

6 Q. AND YOU ALSO ONLY RECENTLY, BACK IN FEBRUARY OF
7 2023, OBTAINED A PSYCHOLOGICAL EVALUATION FOR ADHD,
8 WHICH YOU ARE NOT RELYING ON IN SUPPORT OF YOUR -- YOUR
9 LITIGATION; CORRECT?

10 A. BECAUSE THERE IS -- SO, YES. THERE IS A
11 DIFFERENCE IN FINANCIAL BENEFIT FROM BEING A POOR
12 GRADUATE TO SOME TIME AFTER SCHOOL. SO AT THAT TIME,
13 NO, I DID NOT HAVE ACCESS TO EXTRA EVALUATIONS.

14 Q. YOU ATTEMPTED TO GET A LETTER FROM NURSE
15 PRACTITIONER TINA HOLBROOK TO SUPPORT YOUR CLAIM IN THE
16 LITIGATION; IS THAT CORRECT?

17 A. YES, I DID.

18 Q. AND I BELIEVE YOU SCHEDULED AN APPOINTMENT WITH
19 HER, PERHAPS THE DAY BEFORE YOUR PRELIMINARY INJUNCTION
20 MOTION WAS DUE AND YOU ASKED HER TO PROVIDE A LETTER
21 WITH YOUR CURRENT DIAGNOSIS AS WELL AS ANY
22 ACCOMMODATIONS THAT YOU NEEDED?

23 A. THAT'S -- THAT SOUNDS CORRECT. I'M NOT FAMILIAR
24 WITH THE DATE BUT THE LETTER, YES, I DID REQUEST IT.

25 Q. LET'S PULL UP DX 35.

1 DR. KITCHENS, I WILL REPRESENT TO YOU
2 THESE LOOK A LITTLE DIFFERENT FROM SOME OF THE BAPTIST
3 HEALTH RECORDS WE'VE SEEN. SO YOU OBTAINED A SET OF THE
4 RECORDS, AND WE OBTAINED A SET OF THE RECORDS.

5 I'LL JUST REPRESENT TO YOU THIS IS FROM
6 THE ONES THAT WE OBTAINED IN OUR SUBPOENA.

7 A. OKAY.

8 Q. WE CAN -- AND THIS ONE IS LONG, BECAUSE THAT'S
9 JUST THE WAY. SO IF YOU MAYBE WANT TO MAYBE DEFER, I AM
10 LOOKING THROUGH THIS BUT IF WE COULD RIGHT NOW IF YOU GO
11 TO PAGE 61 --

12 A. I WILL DEFER THAT'S FINE.

13 Q. OF THIS DOCUMENT?

14 A. WHAT PAGE WAS THAT, MS. MEW?

15 Q. WE ARE GOING DOWN TO PAGE 61.

16 A. 61. OKAY.

17 Q. OKAY. THIS PAGE IS BATES NUMBERED NBME BAPT
18 0061, AND THIS IS FROM A FEBRUARY 6, 2023, OFFICE VISIT
19 WITH TINA HOLBROOK; CORRECT?

20 A. YES.

21 Q. AND IF YOU CAN SCROLL DOWN, PLEASE. THESE ARE
22 NOTES FROM THAT OFFICE VISIT; CORRECT?

23 A. YES, THIS APPEARS TO BE CORRECT.

24 Q. AND THEN IF WE LOOK TO PAGE 70 OF THIS DOCUMENT,
25 WHICH IS ALSO BATES NUMBERED NBME BAPT 0070.

1 DR. KITCHENS, DOES THIS LOOK LIKE THE
2 LETTER -- WHY DON'T YOU SCROLL DOWN A LITTLE BIT BECAUSE
3 WE ARE GETTING -- NURSE HOLBROOK PREPARED?

4 A. YES, AND WHAT THIS WAS THE DX?

5 Q. WE ARE AT DX 35.

6 A. IT'S THE SAME DOCUMENT.

7 Q. PAGE 70. SO IT'S LIKE ONE VERY LONG FILE FOR
8 THIS PARTICULAR DATE.

9 A. YES, THIS IS CORRECT.

10 Q. YOU DIDN'T THINK THAT THIS LETTER WAS
11 SUFFICIENT; CORRECT?

12 A. EVEN THOUGH THIS IS COMMON PRACTICE, AS WE SAW
13 IN MY PROGRESS -- I MEAN, IN MY APPLICATION FROM DR.
14 KHAN, VERY SIMILAR TO THIS, AFTER HEARING -- ESPECIALLY
15 DURING LITIGATION AND SAID THAT IT WAS A SPARSE LETTER
16 FROM A DOCTOR, I WANTED HER TO BE MORE SPECIFIC.

17 SO NO, I THOUGHT IT WAS FINE, BUT KNOWING
18 THE NBME WOULD NOT THINK THAT IT WAS FINE IS WHAT I AM
19 INDICATING. SO THAT'S WHY I DID ALSO REACH OUT TO HER
20 AND ASK FOR HER TO BE MORE DETAILED AND WHAT THINGS SHE
21 SHOULD INCLUDE IN HER LETTER TO PLEASE THE NBME.

22 Q. SO IF WE LOOK TO PAGE 48, DX 35, AND IF WE
23 SCROLL DOWN JUST A LITTLE BIT.

24 A. YES.

25 Q. SO HERE, DO YOU SEE THIS LANGUAGE IN ALL CAPS?

1 "SPOKE TO PATIENT. HE SAID IT IS NOT AS DETAILED AS IT
2 SHOULD BE. HE SAID IT ALSO NEEDS TO INCLUDE
3 ACCOMMODATIONS 100 PERCENT OF TIME PLUS 100 PERCENT."

4 DO YOU SEE THAT LANGUAGE?

5 A. YES. I DO. I JUST KIND OF ANSWERED THAT ONE.

6 Q. OKAY. AND THEN IF WE SCROLL DOWN JUST A LITTLE
7 BIT. AND IT LOOKS LIKE WHAT NURSE HOLBROOK IS TELLING
8 YOU IS THAT SHE THINKS YOU SHOULD GO GET A PSYCHOLOGICAL
9 EVALUATION TO FURTHER ASSESS YOUR SPECIFIC NEEDS FOR
10 ACCOMMODATIONS; IS THAT CORRECT?

11 A. SO WHAT NURSE -- SO FOR INFORMATION FOR THIS
12 INFORMATION -- I MEAN THIS E-MAIL, SORRY -- IS THAT SHE
13 DIDN'T -- SHE DIDN'T KNOW IF SHE COULD PUT MORE
14 INFORMATION IN THERE DUE TO WHATEVER REASONS AND SHE
15 SAID THAT SHE FELT THAT IT WOULD BE BETTER FOR ME TO TRY
16 TO GET THAT EVEN THOUGH SHE WAS THE ONE -- HER CLINIC
17 WAS THE ONE WHO PROVIDED -- AS YOU CAN SEE AT THE CLINIC
18 YOU USE THE -- AND SHE PROVIDED ME THAT DOCUMENTATION.

19 AND SHE FELT THAT IT WOULD BETTER SUPPORT
20 THE LETTER THAT SHE WAS ABLE TO WRITE FOR ME TO GO AND
21 GET AN EVALUATION. YES. IT'S NOT JUST BLACK AND WHITE.
22 AND AGAIN, I DON'T KNOW WHY IT'S IN ALL CAPS. IT WAS --
23 I THINK THAT'S JUST...

24 Q. WE CAN TAKE THIS DOWN.

25 IF WE CAN PULL UP DX 63. STRIKE THAT.

1 I AM GOING TO TRY TO USE -- PX 2, PLEASE.

2 WE ARE GOING BACK, DR. KITCHENS, TO YOUR
3 FIRST ACCOMMODATIONS REQUEST. AND I WANT TO LOOK -- NO
4 FIRST PAGE, PLEASE. CAN YOU EXPAND? I WANT TO LOOK AT
5 THE FIRST BULLET POINT THERE ON THE FORM.

6 SO THIS FORM HAS -- THE FIRST BULLET
7 POINT INSTRUCTION IS TO REVIEW THE USMLE GUIDELINES FOR
8 TEST ACCOMMODATIONS FOR A DETAILED DESCRIPTION OF HOW TO
9 DOCUMENT A NEED FOR ACCOMMODATIONS.

10 DO YOU SEE THAT LANGUAGE.

11 A. I DO SEE THE LANGUAGE AND THIS LANGUAGE WAS
12 PROBABLY THAT I COMPLETELY OVERLOOKED BECAUSE OF THE
13 DETAILS THINGS THAT THEY ASKED FOR WAS IN BOLD, AS I
14 EXPLAINED IN MY TESTIMONY EARLIER.

15 Q. SO IS IT FAIR TO SAY YOU DID NOT REVIEW THE
16 GUIDELINES BEFORE YOU SUBMITTED YOUR ACCOMMODATION
17 REQUEST?

18 A. I THINK THAT'S A MISREPRESENTATION. I FOLLOWED
19 THE -- IF YOU SCROLL DOWN SOME MORE, YOU WILL BE ABLE TO
20 SEE THE DIFFERENT DOCUMENTS AND THINGS THAT THEY SAID
21 THAT COULD BE RECOMMENDED AND THAT'S WHAT I SUBMITTED.

22 IF YOU SCROLL DOWN SOME MORE THERE IS THE
23 BOLD LETTERS THAT STICK OUT AMONGST THE OTHER WORDS
24 THERE, AND THAT'S WHAT I -- THAT'S WHAT I SUBMITTED
25 THERE, PERSONAL STATEMENTS, LETTERS OF RECOMMENDATION,

1 AND MEDICAL RECORDS, ET CETERA.

2 Q. LET'S PULL UP DX 61. SO IF WE GO TO PAGE 355.

3 DR. KITCHENS, DO YOU RECOGNIZE THESE
4 GUIDELINES FOR THE -- FOR REQUESTING ACCOMMODATIONS ON
5 THE USMLE, IS THIS SOMETHING THAT YOU HAVE LOOKED AT ON
6 THE WEBSITE?

7 A. AS I SAID IN MY DEPOSITION, THIS IS A DOCUMENT
8 THAT I -- DID NOT SEE THIS DOCUMENT BEFORE I WENT
9 STRAIGHT TO THE APPLICATION AND FOCUSED ON THE THINGS
10 THAT WERE IN BOLDED FROM THE APPLICATION.

11 Q. SO YOU DID NOT READ, FOR EXAMPLE, THE GUIDANCE
12 THEY ARE PROVIDING ABOUT THE KIND OF INFORMATION THAT
13 YOU COULD PUT IN YOUR PERSONAL STATEMENT?

14 A. I FOLLOWED ALL OF THE INFORMATION THAT WAS ON
15 THE ACTUAL APPLICATION ITSELF AND THAT WAS BOLDED, BUT
16 THOSE SPECIFIC LITTLE THINGS THERE, I DON'T -- I DID NOT
17 SEE THAT ON THE APPLICATION.

18 Q. DR. KITCHENS, YOU ARE NOT CURRENTLY REGISTERED
19 TO TAKE THE STEP 1 EXAM; CORRECT?

20 A. IT WOULD NOT BE RECOMMENDED TO APPLY FOR AN EXAM
21 WHEN YOU CAN'T APPLY UNLESS YOU ASK FOR ACCOMMODATIONS
22 OR APPLY FOR IT AS A STANDARD. SO I CANNOT APPLY UNTIL
23 AFTER THIS LITIGATION, WHICH I HAVE SAID ALSO IN MY
24 DEPOSITION.

25 Q. RIGHT. I JUST I JUST ASKED YOU A YES OR NO

1 QUESTION, DR. KITCHENS.

2 ARE YOU CURRENTLY REGISTERED FOR THE STEP
3 1 EXAM?

4 A. NO, I AM NOT PERMITTED TO DO THAT.

5 Q. WHY ARE YOU NOT PERMITTED TO DO THAT?

6 A. I'M NOT PERMITTED TO DO THAT YET BECAUSE WHEN
7 YOU ARE APPLYING THROUGH ECFMG, WHEN YOU ARE APPLYING ON
8 THE APPLICATION, YOU CANNOT SUBMIT YOUR APPLICATION
9 UNLESS YOU CLICK ON THERE YOU ARE REQUESTING
10 ACCOMMODATIONS OR YOU ARE APPLYING FOR STANDARDIZED
11 EXAM. SO NO, I WOULD NOT -- IT WOULD NOT BE BENEFICIAL
12 FOR ME TO DO THAT.

13 Q. BUT YOU COULD GO IN AND REGISTER AND YOU COULD
14 PUT TOGETHER A PACKET OF INFORMATION USING THE
15 DOCUMENTATION THAT YOU HAVE COMPILED AND -- NO? OKAY.

16 A. NO, THIS WOULDN'T BE -- THIS WOULD NOT BE AN
17 ACTION THAT WOULD BE JUSTIFIED TO DO, NO, MA'AM.

18 Q. AND, YES OR NO QUESTION, DR. KITCHENS, ARE YOU
19 CURRENTLY REGISTERED TO THE TAKE STEP 2 CK EXAM?

20 A. NO.

21 Q. DR. KITCHENS, YOU KNEW BACK IN JANUARY OF THIS
22 YEAR THAT YOU HAD MISSED THE DEADLINES FOR PARTICIPATION
23 THE IN THE 2023 MATCH; CORRECT?

24 A. NO.

25 Q. LET'S LOOK AT DX 28.

1 A. FOR THE PRELIMINARY INJUNCTION IT WAS NEWS TO ME
2 THAT ENGLISH EXAMINATION OTHERWISE I WOULD NOT HAVE
3 WASTED MY TIME NOR THE COURTS'S TIME IF THAT'S WHERE WE
4 ARE GOING WITH THIS.

5 Q. DX 28.

6 A. DX 28.

7 Q. DX 28 ARE PROGRESS NOTES FROM JANUARY 10, 2023,
8 VISIT WITH TINA HOLBROOK?

9 A. YES, THIS APPEARS TO BE CORRECT.

10 Q. IF YOU LOOK HERE IN YOUR HISTORY OF PRESENT
11 ILLNESS, AND LOOKING ABOUT AT THE 4TH LINE DOWN, YOU
12 INFORM MS. HOLBROOK THAT YOU MISSED THE RESIDENCY
13 DEADLINES.

14 DO YOU SEE THAT?

15 A. RIGHT. SO AT THAT PARTICULAR TIME, I WASN'T
16 AWARE OF THE -- OF THAT -- OF AN EXTRA -- THE DEADLINE
17 BEING ACTUALLY FOR MAY 25TH. SO MY INFORMATION THERE AT
18 THE TIME WAS NOT THERE, WHICH IS THE REASON WHY I DIDN'T
19 GO STRAIGHT FOR PRELIMINARY INJUNCTION UNTIL THE END --
20 UNTIL HALFWAY THROUGH THE LITIGATION AND I REALIZED THEN
21 MY UNDERSTANDING WAS THAT I HAD UNTIL MAY 25TH.

22 SO NO, THIS INFORMATION HERE IS NOT
23 NECESSARILY CORRECT.

24 Q. DR. KITCHENS, DO I UNDERSTAND CORRECTLY FROM
25 YOUR PRIOR TESTIMONY THAT YOU WERE NOT TAKING ANY

1 PRESCRIPTION MEDICATION, TAKING ADDERALL, WHILE YOU WERE
2 IN MEDICAL SCHOOL IN LUBLIN?

3 A. NO, I WAS NOT ABLE TO TAKE ADDERALL WHILE I WAS
4 IN LUBLIN. I USED OTHER MITIGATING SUPPLEMENTS, AS I
5 SAID IN MY TESTIMONY.

6 Q. I JUST WANTED TO MAKE SURE I UNDERSTOOD AND YOU
7 ARE NOT TAKING ANY OTHER PRESCRIPTION MEDICATIONS THAT
8 WOULD BE -- WOULD BE GIVEN FOR ADHD, YOU WERE ONLY
9 TAKING OVER THE COUNTER SUPPLEMENTS; THAT IS CORRECT?

10 A. SO IN POLAND, ADHD IS NOT REALLY RECOGNIZED AS
11 MUCH. SO IT'S NOT REALLY A COMMON PRACTICE THERE, SO
12 NO.

13 Q. IF WE CAN PULP PX 16.

14 DR. KITCHENS, THIS WAS A DOCUMENT THAT
15 YOU PULLED UP TO DISCUSS DURING YOUR DIRECT TESTIMONY
16 BUT DID NOT ADMIT INTO EVIDENCE. AND WE CAN SCROLL BACK
17 DOWN AND SO YOU CAN SEE WHAT IT IS.

18 A. I CAN'T READ IT, IT'S SO SMALL, BUT YES. I
19 THINK IT'S A MEDICAL NOTE.

20 Q. WE WILL -- I WANT YOU TO BE ABLE TO SEE IT
21 BECAUSE WE ARE GOING TO SEEK TO ADMIT IT RIGHT NOW. I
22 WILL GIVE YOU A CHANCE TO LOOK AT IT.

23 A. OKAY.

24 MS. MEW: DEFENDANT MOVES TO ADMIT DX 16
25 INTO EVIDENCE.

1 DR. KITCHENS: NO OBJECTIONS.

2 THE COURT: ADMITTED.

3 (DEFENSE EXHIBIT 16 IS ADMITTED INTO
4 EVIDENCE.)

5 BY MS. MEW:

6 Q. IF WE LOOK DOWN TO PAGE 4 OF THIS DOCUMENT --
7 WELL, LET'S STOP BEFORE WE GET TO FOUR.

8 DR. KITCHENS, YOU WERE DISCUSSING THIS
9 RECORD. THIS WAS FROM -- GO BACK TO PAGE 1.

10 A. PAGE ONE, OKAY.

11 Q. THIS IS --

12 A. PX 16.

13 Q. PX 16 IS FROM A FEBRUARY 15, 2016, OFFICE VISIT
14 WITH DR. HACKMAN?

15 A. YES, THIS IS CORRECT.

16 Q. AND IF WE GO DOWN TO THE LAST PAGE OF THIS
17 DOCUMENT, IT INDICATES THAT DR. HACKMAN STOPPED YOUR
18 ADDERALL PRESCRIPTION AT THIS MEDICAL APPOINTMENT;
19 CORRECT?

20 A. NO, IT'S NOT -- NO. SO REPUTATION OF THIS
21 DOCUMENT IS THAT BECAUSE THERE WAS A GAP OF TIME WHEN I
22 DIDN'T HAVE THE MEDICATION IS WHY SHE DIDN'T FEEL
23 COMFORTABLE WITH WRITING THAT MEDICATION UNTIL AFTER
24 BEING RE EVALUATED AND THEN ONCE I WAS RE EVALUATED SHE
25 THEN PRESCRIBED THE MEDICATION.

1 Q. ALL RIGHT. WE WILL DEAL WITH THAT.

2 MS. MEW: YOUR HONOR, I THINK THAT I AM
3 CLOSE TO COMPLETE. SOME OF MY QUESTIONS WERE GOING TO
4 COME OFF -- FROM SOME OF THESE DOCUMENTS THAT I ALSO
5 JUST WANTED TO BRING UP. IF IT WOULD MAKE SENSE, AGAIN,
6 FOR DR. KITCHENS AND I TO PERHAPS TRY TO JUST BE ABLE TO
7 STIPULATE TO THAT TONIGHT AND THEN WE COULD TRY TO
8 FINISH UP THE CROSS AS SOON AS POSSIBLE TOMORROW
9 MORNING, WOULD THAT BE OKAY? BECAUSE -- I AM -- I
10 THINK YOU SAID YOU HAD A HARD STOP AT 4:45, IF THAT'S
11 CORRECT?

12 THE COURT: ALL TRUE. I CERTAINLY
13 ENCOURAGE TO YOU DO THAT AND I HAVE NO PROBLEM WITH
14 MOVING EXHIBITS IN LIKE THAT.

15 OKAY. SO WE WILL RESUME THIS TOMORROW
16 MORNING AT 9 A.M.

17 DR. KITCHENS, SINCE YOU ARE ON CROSS, YOU
18 SHOULD NOT DISCUSS YOUR TESTIMONY WITH ANYONE OVERNIGHT.
19 OBVIOUSLY YOU ARE, YOU KNOW, FREE TO THINK ABOUT IT AND
20 -- IN YOUR OWN -- WITH YOURSELF BUT YOU SHOULD NOT
21 DISCUSS YOUR TESTIMONY WITH ANYONE WHILE YOU -- WHILE
22 CROSS EXAMINATION IS OPENED; OKAY?

23 DR. KITCHENS: UNDERSTOOD, YOUR HONOR.

24 THE COURT: ALL RIGHT. AND I KNOW YOU
25 HAVE TO PREPARE YOU MAY HAVE ON YOUR MINE PREPARING YOUR

1 CROSS EXAMINATION OF MS. MEW'S WITNESSES, THAT'S FINE.
2 THAT'S DIFFERENT, BUT FOR YOUR OWN TESTIMONY DON'T
3 DISCUSS THAT; OKAY?

4 DR. KITCHENS: UNDERSTOOD, JUDGE.

5 THE COURT: ALL RIGHT. I WILL SEE
6 EVERYBODY TOMORROW MORNING AT 9:00 A.M.

7 (COURT ADJOURNED.)

8
9 I CERTIFY THAT THE FOREGOING IS A CORRECT
10 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
11 ABOVE-ENTITLED MATTER.

12 6-8-23

13 DATE

Lynn Gligor

OFFICIAL COURT REPORTER

14 LYNN GLIGOR, RMR

15
16 I N D E X

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22	BY DR. KITCHENS	83	--	--	--
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